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## WAR AND CRIME



# WAR AND CRIME

BY

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TO  
R. S. T. CHORLEY





## FOREWORD

THE present book is an expanded version of a course of lectures on "War and Crime" delivered during February and March, 1940, at the invitation of the London School of Economics and Political Science, first in Cambridge to members of London and Cambridge Universities, and subsequently repeated as public lectures in London. To the Director of the School I am very grateful for having once more given me an opportunity of treating criminological problems before wider audiences than can be reached in ordinary courses. My sincere thanks are also due to those friends of the School whose generosity made these lectures possible. Finally I would like to acknowledge my great indebtedness to Professor R. S. T. Chorley, who has for many years not only taken a keen personal interest in the promotion of criminological studies in this country, but has also succeeded in securing practical support for them.

Since the lectures were delivered barely six months after the outbreak of the present War they could include no detailed observations on its influence upon the crime situation. Even now it seems still too early for such an appreciation.

general introduction to the problems concerned and to some observations of a historical character, hoping that later on it might become possible to deal more fully with the criminological aspects of the present situation.

*London, August, 1940.*

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PART I

WAR AND CRIME: ANALOGIES AND  
CONTRASTS



## CHAPTER I

### INTRODUCTION

WE have it on the authority of Sir Norman Angell's "John Smith" that something like ten thousand books have been written about war.<sup>1</sup> To these may safely be added at least an equal number dealing with the various aspects of crime. The prospect facing the criminologist who proposes to deal simultaneously with these phenomena is therefore indeed formidable. On the other hand, when discussing problems of war he need not fear that he may be advised to mind his own business. There should be, in fact—apart from his own particular sphere—no other field where he may speak with so much justification. This does not mean that the author views every war as a crime and therefore *a priori* as a fit subject for the criminologist. The reader will look in vain here for such a line of argument. The principal point to require our attention will, of course, be the *influence of war upon crime*.

This particular aspect cannot, however, be segregated from the fundamentals of the complex relationship between war and crime in general. While lawyers and sociologists will stress the contrasts between these phenomena, anthropolo-

<sup>1</sup> *The Unseen Assassins*, p. 30.



gists and historians will point to their common origin. Others will claim certain similarities in the psychological, social, and economic causes responsible for both. Social philosophers, political reformers and pacifists, in their fight against the scourge of war, are inclined to turn to the history of crime, hoping therein to find some support for the view that the final suppression of war is not entirely unattainable. Just as personal violence between individuals or groups, so it is said, has largely been eliminated by the evolution of strong national States, so will war between nations eventually become a thing of the past through the evolution of the super-State. This idea finds its analogue in the belief, formerly cherished by Bolshevist lawyers, that crime would automatically disappear after the abolition of private property. Surely a feeble argument when one considers how questionable is that presupposition itself: Is crime really disappearing, or is it merely undergoing certain changes in phase? But let such an actual decline in crime even be taken for granted, is it not perhaps this very fact—the “inadequacy” of the existing amount of crime, at least of crime of violence, within the State—that leads to the criminal urge in certain nations being turned against their neighbours?

Moreover, at least part of the argument in favour of Federal Union largely centres round the idea that actions now bound to involve nations in war could, in a Federal Union, be treated as crimes of individuals.<sup>1</sup> This would seem to indicate that

<sup>1</sup> See Clarence K. Streit, *Union Now* (1939), pp. 202 *et seq.*

in the course of history the following trends dominate the relationship between crime and war :—

*The Past* : Weak States—abundance of individual crime, but no organized war.

*The Present* : Strong national States—frequent wars and a lower rate of crime.

*The Future* : Federal Union—no war, and consequently a high proportion of crimes of violence.

This rather gloomy scheme may be put forward not as a foregone conclusion, but solely as a point for further discussion. There exists, however, still another parallelism between war and the conceptions which come under the scope of the criminologist. Whereas analogies between war and crime must largely be restricted to unjust wars, it is likewise obvious that the just war may in many ways be comparable with the second fundamental conception of criminology—that of *punishment*. And it is therefore not surprising to find that all those statesmen, international lawyers, and political philosophers who have in recent times been making unsuccessful attempts to eliminate war have also been seeking a way of adapting the traditional methods of punishment to the treatment of criminal nations. Is it possible to treat an aggressor nation exactly like a criminal individual? Or is not, as argued by the supporters of Federal Union, the impossibility of doing so just one more argument in favour of such a Union?

There thus arise a multitude of problems for discussion in the following chapters. Firstly two

essential points of contrast between war and crime must be briefly clarified in this introductory chapter of Part I: Crime is an individual action, war a group action; crime is always a wrong, war is wrong only according to circumstances. There is, secondly, the question of how far the various factors likely to produce crime may also be held responsible for the causation of wars, or *vice versa* (Chapter II). Closely related to this is the further question of how far war is itself a causative factor of crime (Part II). The final chapters (Part III) will deal with the attitude of existing International Law towards the distinction between just and unjust wars, and with certain analogies between war aims and aims of punishment.

At first sight the contrast between war and crime seems as obvious as it is profound. First, while crime is regarded as the action of individuals—even where gangs or crowds of individuals are involved—war requires a struggle between groups as such; not necessarily between States, as the example of civil war proves, but at least between groups. In the closest connection with this first point stands the second: while the very term crime implies *wrongness*, implies an anti-social, unlawful character, war—except to the extreme pacifist—may, according to circumstances, be right or wrong. Consequences of the highest importance, ideological as well as practical, might well have been drawn from these alleged contrasts. In particular it might have been argued that, just as group interests are of greater importance to the

world at large than individual interests, struggles between groups can also be expected to stand on a higher ethical level than individual quarrels. Human beings fighting for their groups might be supposed to act from motives less selfish than those which actuate them when pursuing their personal aims only. To supplement and to strengthen this part of the argument the very conception of war might have been limited to wars fought for just causes and for lofty purposes, whereas unjust wars might, from the very beginning, have had to be regarded as a particularly heinous form of crime. Unfortunately—not only for the material well-being, but also for the good reputation of the human race—a clear-cut distinction of this kind has not recommended itself to those responsible for the upholding of that reputation.

Let us consider the first point in some detail—crime an *individual* action; war a *group* action. How far does this classification hold true, and how far can it claim universal recognition?

If our imagination will allow us to conjure up a state of society where there are only two human beings, A and B, living happily together at a given place (two males, in order to avoid any unnecessary complications—perhaps Robinson and Friday), can there be any distinction between war and crime in their mutual relations? We may assume that they have solemnly established a State and formally introduced a Constitution, a Civil and a Penal Code, based on the traditional principles, and have placed the entire government and the

administration of the law of the land in the hands of a body consisting of two supreme ministers and judges—again A and B, or Robinson and Friday—whose decisions must be unanimous. To add to the improbability of this state of affairs, we may further assume that they are indeed able to reach such unanimity in each case of difference that no difficulties of mere procedure will have to be overcome. If now, all this having been settled, A, without any justification, should attack and wound B and take his property by force, what would be the decisive criterion for the Court to judge whether such actions should be interpreted as crimes or should be regarded as acts of warfare?

Would an explicit declaration of war on the part of A have any significance? Probably not, and the Court would have to decide that A had been guilty not of honourable warfare, but of crime, for the simple reason that his actions had been directed against a member of his own group, and there could be no war within the group. It might perhaps have been civil war if A had planned to upset the Constitution by force; this, however, as he solemnly declares, was entirely outside his intention, which had been in no way directed at the commission of a political crime but solely at the acquisition of some articles of food belonging to B. The unfortunate A would therefore have to accept the fact that he was deprived of the possibility of making war on B, unless he should sever his group connection with him and wish to become the founder of a new State of his own.

We have now to pass from this purely fictitious

example of a two-member society, where there cannot exist any difference between the one group and other groups, to normal conditions, and to enlarge the circle so as to have on either side a family, or a clan, or a tribe, or whatever we may call such groups. And by doing so we place ourselves in a position where we are able to distinguish between two categories of injurious actions—first, those directed against the actor's *own* group or against a member of his group, and, secondly, actions by a group or its individual members directed against *another* group or its members. According to modern conceptions the term war is applicable only to hostile actions of one group against another group, while corresponding actions of one individual against an individual member of another group would fall under the category of crime. Not so in primitive society. It is, of course, neither possible nor necessary to discuss in any detail the organization of primitive society and the mutual relations between its members. It may even be questionable how far it is safe here to generalize on such matters. Nevertheless a few facts seem to stand out fairly clearly. Though we have to take every care not to exaggerate the extent of collectivism and communism—in its original sense—in primitive society,<sup>1</sup> it is beyond doubt that the line of demarcation between individual and group action and—what is perhaps even more important—between individual and

<sup>1</sup> See, e.g., H. Ian Hogbin, *Law and Order in Polynesia* (1934), pp. 76 *et seq.*, and Prof. Malinowski's Introduction, p. xli.

group responsibility, used to be drawn in primitive communities somewhat differently from the way it is drawn to-day—at least in non-totalitarian States. In other words the sphere of group activities and group responsibilities was then comparatively wider. One of the many reasons for this may have been the smallness of the groups which were formerly involved in such activities. The smaller the circle in which an individual moves the more likely is he to overstep the boundaries of this circle, and the greater is the probability that he may involve his fellow-members in his adventures. On the other hand it is true that members of large communities, conscious as they are of the strength of their group, may tend to increase their aggressiveness and try to implicate the group in their individual quarrels.

In short, if we leave out of consideration injuries inflicted within the group, which used to be rather embarrassing to all those concerned and are of little interest for our present purposes, we are faced with a state of affairs which may be described approximately as follows: Homicide and other injuries inflicted outside the group are, as a rule, neither regarded as crimes nor disapproved, often even regarded as praiseworthy, though there are important exceptions to this rule.<sup>1</sup> There is hardly anything dishonourable in crimes like theft, brigandage, or piracy, if committed at the expense of other groups, even if no armed force is used to make them appear more warlike. The alien sea-

<sup>1</sup> E. Westermarck, *The Origin and Development of Moral Ideas*, 2nd ed. 1924-6, Vol. I, p. 331.

farer by no means resents being asked whether he is a pirate.<sup>1</sup> We read in Julius Caesar's *De bello gallico* (VI, 23) that "*Latrocinia nullam habent infamiam quae extra fines cujusque civitatis fiunt*" (Robberies committed abroad are not regarded as dishonouring). Moreover, there is hardly any regular organized warfare among primitive peoples, because war "implies a certain social development"; there are, however, "perpetual predatory raids."<sup>2</sup> "The Australian tribes," as Professor Ginsberg points out,<sup>3</sup> "have no war in the sense of collective fighting by whole tribes, but there is or was a widespread system of vengeance against members of other groups." "Uncivilized warfare," to quote Professor Hobhouse, "is in its essence as much a struggle between individuals as between communities. . . . War is waged not only by tribe against tribe, but by individuals against individuals." Accordingly we may conclude that to a large extent there is no fundamental difference between war and crime, as far as injurious actions against members of other groups are concerned; the opposite of war is not so much peace in its modern sense but simply the absence of violence.<sup>4</sup>

On the other hand, even as far as this type of warfare or crime is conducted by individuals against individuals, its consequences fall largely

<sup>1</sup> See Gustave Glotz, *La solidarité de la famille dans le droit criminel en Grèce* (1904), pp. 198 et seq.

<sup>2</sup> L. T. Hobhouse, *Morals in Evolution*, 6th ed. 1929, p. 235.

<sup>3</sup> *British Journal of Medical Psychology*, Vol. XIV (1934).

<sup>4</sup> See Ginsberg, *loc. cit.*



upon the whole group. The whole group is made responsible for outrages committed by its individual members, and the group shields its members against vengeance from outside, which, in its turn, has to be expected from the whole group of the victim.<sup>1</sup> There is thus no difference between the reactions against an individual crime on the one hand, and against collective acts of warfare on the other. An American sociologist even goes so far as to deny in substance that there existed any punishment in primitive communities, because (so he argues) *inside* the group there was no penal reaction, and the reaction against crime committed *outside* the group was war<sup>2</sup>—a statement which, though as to its first part greatly exaggerated, may as to its second part be correct. In any case it is obvious that such an identity of reactions against crime and against war must have had some effect upon the attitude of the offender's group. Since the latter is conscious of the fact that, even for an individual crime, it will be attacked by the victim's group in warlike manner, it would be foolish to punish the offending member—perhaps by killing him—and thereby deprive the group of his help in the forthcoming fight. Even to-day in Uganda (or at least before the setting up of the British administration of criminal justice there) we are informed<sup>3</sup> that if

<sup>1</sup> Robert Lowie, *Primitive Society*, 2nd impression 1929, p. 386.

<sup>2</sup> Ellsworth Faris, in A. Kocourek and J. H. Wigmore, *The Evolution of Law*, Vol. II (1915), pp. 152, 157.

<sup>3</sup> See H. R. Hone, *Journal of Comparative Legislation and International Law*; Third Series, Vol. XXI, Part IV (Nov., 1939), p. 183.

"a Bagishu killed a clan brother his goods were forfeited, but if he killed a member of another clan he had only to go through certain rites of purification and to join with the members of his clan in repulsing any attack by the members of the deceased person's clan." To conclude this part of my argument, there existed in primitive communities no distinction between criminals and prisoners of war; both categories were favourite objects for slaughter as sacrifices to the angry gods.<sup>1</sup> There are, of course, exceptions to this. "Agesilaus," according to Xenophon, "reminded his soldiers that prisoners were men to be kept, and not criminals to be punished."<sup>2</sup>

Likewise, not only the conception of war but also its opposite number, peace, finds its place in the field of what is now called the Penal System. Just as after war comes peace, so the hostile feelings caused by the commission of a crime were calmed not so much by punishment as by the solemn conclusion of a peace between the two groups or between the killer and the family of his victim.<sup>3</sup> There is no distinction between peace as the end of war and peace as the extinguisher of the evil consequences of crime.

As everyone familiar with the consequent history of crime and penal law knows, this close relation-

<sup>1</sup> Durbin-Bowlby, in *War and Democracy, Essays on the Causes and Prevention of War*, edited by E. F. M. Durbin and G. E. G. Catlin (1938), p. 122; E. Westermarck, *op. cit.*, Vol. I, pp. 335 *et seq.*

<sup>2</sup> Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (1911), Vol. II, p. 261.

<sup>3</sup> See, for instance, Gustave Glotz, *op. cit.*, Chap. V: "Le Traité de Paix privée."

ship between the two fundamental conceptions with which this book has to deal has not been limited to primitive society in the narrowest meaning of the word. It continued through the centuries and we are almost tempted to say that it extended its scope; crime assumed the character of war not only when committed outside the group, but just as well inside. In this respect there may be quoted the famous passage in Pollock and Maitland's *History of English Law*,<sup>1</sup> used to characterize the essence of outlawry:—

He who breaks the law has gone to war with the community; the community goes to war with him.

As outlawry—expulsion from the community—obviously implies that the lawbreaker had been a member of the community which expels him, this can be interpreted only as indicating that crime, even when committed within the group, took on the character of war. And it is indeed hardly necessary to dwell at any length on the fact that the history of crime in the early Middle Ages, in this country as well as on the Continent, is largely nothing but the history of private warfare on land and sea. “The right of private war,” it has been said, “was the foundation of Teutonic law,”<sup>2</sup> and Pike, the historian of crime in England, alleges that “the criminal tendencies of modern times seem in many cases to have been handed

<sup>1</sup> Vol. II, p. 449.

<sup>2</sup> Luke Owen Pike, *History of Crime in England* (1873), Vol. I, pp. 79–80.

down from a period when that which is now considered crime was thought very nearly akin to virtue. The knights, or, in other words, the class corresponding to our modern country gentry, were commonly engaged in exploits which it is extremely difficult to distinguish from brigandage.”<sup>1</sup> At sea likewise it seemed for many centuries hopeless to draw the proper borderline between legitimate warfare (privateering) and piracy, and the princes assumed responsibility not only for their privateers but also for the piratical acts of their subjects.<sup>2</sup>

At the same time the idea of peace as the negation not only of war but also of crime gains more and more ground. The history of English and Continental criminal legislation is to a wide extent the history of attempts to fight crime and to make the country safe by means of a network of various categories of “peace”—a “general” peace and a “higher” peace, the King’s peace, God’s peace, the Duke’s peace, the German “Königsfrieden,” “Gottesfrieden,” Landfrieden”—in short, peace as the equivalent of law and order, internally as well as externally.<sup>3</sup> The “Landfrieden” (comprehensive pieces of legislation passed between the twelfth and fifteenth centuries in Germany), contain, in addition

<sup>1</sup> Pike, *op. cit.*, pp. 246 *et seq.*

<sup>2</sup> See Edward Lewis, “Responsibility for Piracy in the Middle Ages,” *Journal of Comparative Legislation and International Law*, Third Series, Vol. XIX, Part I (February, 1937).

<sup>3</sup> Against certain exaggerations of this “peace” theory, see Julius Goebel, *Felony and Misdemeanor* (1937), Vol. I, esp. pp. 7 *et seq.*

to restrictions on the right of private feud, penal statutes directed against common crime—another proof of the close association between private warfare and crime.

It is not without interest to observe that the extension of the range of penal reaction from the individual to the group was, to a certain extent, counterbalanced through the opposite tendency to limit the scope of war and to mitigate its evil consequences by means of a system of *restricted warfare*—duelling by selected representatives.<sup>1</sup> This did not mean that war had become individual action; in principle it remained group action and the group was involved in spirit, though it abstained from taking any active part. This method of warfare is, in its turn, closely associated with trial by battle as a form of criminal procedure.<sup>2</sup>

In modern times crime, especially organized crime in the United States, has once more assumed the character of war, and it is significant that in one of the most brilliant recent investigations of this phenomenon the author, Professor Frank Tannenbaum of New York could find no better phrase to describe the “philosophy of the professional criminal” than a “warrior’s psychosis”<sup>3</sup>—i.e., an attitude of mind which applies exactly the same moral, legal, and social standards to crime against one’s fellow-citizens as it would

<sup>1</sup> Gustave Glotz, *op. cit.*, p. 272; Coleman Phillipson, *op. cit.*, Vol. II, p. 209: single combats instead of general conflicts; Maurice Rea Davie, *The Evolution of War* (1929), Chapter XIV.

<sup>2</sup> Glotz, Book II, Chapter IV; William A. Robson, *Civilization and the Growth of Law* (1935), pp. 127 *et seq.*

<sup>3</sup> *Crime and Community* (1938), Ginn and Co., p. 178.

apply to acts of war against an external enemy :  
“The same ruthlessness towards enemies and traitors, the same loyalties towards companions.”  
The perfect simplicity and consistency of this attitude become clear as soon as it is realized that, in the case of the American gangster, the realm of common loyalties and hates does not run parallel with the State frontiers, and that new barriers have been conceived by the criminal classes within the boundaries of State and society. In the everlasting warfare between State and gangster the whole conception of crime seems somehow to have lost its meaning : it has become completely replaced by the ideology of war, and no Covenant of a League of Nations, no Pact of Paris, has yet undertaken to outlaw this war by a joint agreement of all parties concerned.

To sum up : It would be a mistake to assume that the contrast between war and crime owes its origin and justification to the idea that group quarrels or “ wars ” are, as a matter of principle, morally superior to individual crimes. The only point which, in earlier times, seems to have aroused some interest is whether the injury inflicted by the action of an individual fell upon members of his own group or upon outsiders. In the latter case what would otherwise have been a common crime was, even if it began as the criminal action of an individual, likely to be regarded as honourable warfare. In spite of certain minor changes, this attitude has largely persisted throughout the centuries, and the phenomenon of war has been elevated, legally and morally, to a

pedestal from which it looks down in superiority upon the phenomenon of crime. Lord Northcliffe's formula<sup>1</sup> that newspaper material had selling value in this order: (1) war, (2) sex, (3) State occasions like the funeral of a king or a royal marriage, (4) sport, and (5) crime, is nothing but a jocular expression of this superiority. There are obviously almost as many different types of war as there are types of crime. While, however, in the realm of crime it has usually been the worst species that has transmitted its colour and odour to the less objectionable types of the genus, in the realm of war almost the opposite process has taken place and it is the superior element in war that has elevated the less clean elements.

Very little has been done to make good those initial blunders by revising both conceptions with a view to cleansing them from unsuitable admixtures. Attempts have been made to single out from the whole mass of crime one type as relatively honourable, and this has led to the privileged treatment of political crimes which may be regarded as somehow situated between crime and war. Correspondingly there exists in the sphere of international relations the distinction between just and unjust wars which aims at the stigmatizing of unjust wars as crimes. It is naturally of particular interest for us to examine the vicissitudes and results of the movement towards the outlawry of unjust wars. This is a

<sup>1</sup> Quoted by Professor Q. Wright, *Causes of War and Conditions of Peace* (1935), p. 16, from Mr. Kingsley Martin, *Political Quarterly* (1930), Vol. I, pp. 163-4.

problem that has attracted the attention of many of the greatest minds in the history of mankind<sup>1</sup>—Aristotle, Cicero, Augustine, Thomas Aquinas, Suarez, Grotius, Frederick the Great, Kant, to mention only a few of them. Nevertheless, as everybody is aware, the results of their efforts have been insignificant and have merely proved that human beings, on the whole, are not only incapable of distinguishing between right and wrong but even of realizing the necessity for such a distinction. A certain amount of progress was made in the Middle Ages, largely owing to the interest which the Catholic Church took in the problem. However, the rise of national States, founded upon the dogma of sovereignty, brought such progress to an end. During the seventeenth and eighteenth centuries the earlier attempts to define the conception of *bellum justum* and *jus ad bellum* had to give way to discussions on the *jus in bello*—i.e., on the rules applicable to warfare without any regard to the justness of a particular war.<sup>2</sup> In other words, every hope had to be abandoned of solving the real problem of war. Working out in immense detail the technical rules of the *jus in bello*, international lawyers had found a field of activities where they could busy themselves with less personal risk and more profit. Even after 1919 we still find too often quoted with

<sup>1</sup> See William Ballis, *The Legal Position of War* (1937); A. C. F. Beales, *History of Peace* (1931); Sir William Holdsworth, *History of English Law*, Vol. V, pp. 28 *et seq.*; G. E. G. Catlin, in Durbin and Catlin, *War and Democracy*; Robert Regout, *La doctrine de la guerre juste de Saint Augustin à nos jours* (1935); H. Wehberg, *The Outlawry of War* (1931).

<sup>2</sup> See, e.g., Regout, *op. cit.*, pp. 15–16.



approval Th. J. Lawrence's deplorable dictum<sup>1</sup> that

these are moral questions and modern International Law does not pronounce upon them. . . . It does not pronounce upon the moral questions that occupy such a large space in the writings of the early publicists. . . . Such matters as these [i.e., attempts to distinguish between just and unjust wars] are supremely important, but they belong to morality and theology, and are as much out of place in a treatise on International Law as would be a discussion on the ethics of marriage in a book on the law of personal status.

This is a theory which might be compared, for instance, with the view that the conception of self-defence against the aggressive acts of a burglar has its proper place not in a text-book on criminal law but exclusively in one on ethics. Apparently international lawyers of certain previous generations found themselves too much handicapped by the fact of their being appointed by the princes whose actions they were expected to justify. If the teachers of criminal law had had to depend for their livelihood upon the generosity of the most successful criminals in their districts, the results of their labours might well have been equally unsatisfactory. To-day we are inclined to be angry at the manifest failure of all those experiments, made before the present conflagration, to outlaw unjust wars.

<sup>1</sup> *The Principles of International Law*, 7th ed., 1923, p. 311.

Considering, however, that centuries-old evil traditions cannot be overcome at a "moment's" notice, we may need patience. The Briand-Kellog Pact of August 27, 1928, has had to endure a full quota of blame and ridicule from the very day of its birth, and in the main quite rightly so. Nevertheless it was the first serious legislative attempt to distinguish between war as a right and war as a crime. How far this pact and present-day International Law in general, even in theory, fall short of our expectations will be discussed in Chapter VI. At present we simply want to register the unfortunate fact that mankind is suffering for its age-long failure to stigmatize certain types of war as criminal and to treat them accordingly.

## CHAPTER II

### CAUSES OF WAR AND CAUSES OF CRIME <sup>1</sup>

ANY comparison between war and crime will obviously involve, as one of its major points, an attempt to draw analogies between their causal factors. When approaching this task we need hardly say that our remarks have reference only to that type of war which alone can be compared with crime—to the unjust war. Moreover, our object will be mainly to examine whether criminology, as the science dealing with the causes of crime, may perhaps be able to throw some light upon the causal factors of war—in other words, whether the material collected through criminological researches can perhaps supply us with a laboratory where the various causes of war may be studied in a microcosm. It may be argued that after all, in spite of the frequency of wars, mankind possesses a still greater volume of continuous experiences with crime than with war. Even at times when war is becoming the rule and peace the exception an individual country may enjoy fairly long periods of uninterrupted peace, whereas there is hardly any time or place entirely

<sup>1</sup> An excellent survey of the causes of war is to be found in Professor M. Ginsberg's article in the *Sociological Review*, Vol. XXXI, April, 1939.

without crime. Though the budget of crime is not nearly as regular as Quetelet once believed, there is still more regularity and continuity in the annual blue-books of criminal statistics than war provides for the volumes of the general history of mankind. And, besides, there is another factor which may encourage us to resort to criminology as to an arsenal of experience for the better understanding of war problems. Researches on crime, though still labouring under too much emotional bias, can be carried out in a spirit of somewhat greater detachment than investigations into the causes of war.

At the very beginning of our discussion, however, there arises a formidable obstacle. Are we not asking for trouble when we attempt to apply to war as a group phenomenon observations devoted to crime as an individual phenomenon? "We cannot," it has been justly said,<sup>1</sup> "jump straight from the general observation of individuals and their psychic mechanisms to the analysis of society. The psychology of society is not a million times that of an individual." Bearing in mind the many bridges, currents, and cross-currents existing between war and crime which tend to minimize the distance between them and enable us to say that war is not exclusively a group affair and crime not wholly an individual affair, we may, however, try cautiously to draw some analogies, all the more so as the sociology of

<sup>1</sup> Dr. Karl Mannheim in *Peaceful Change*, edited by C. A. W. Manning (1938), p. 129. See also his *Man and Society in an Age of Reconstruction* (London, 1940), Part III.

crime is becoming increasingly concerned with the investigation of mass phenomena. On the other hand in recent researches into the causation of war the tendency has become more and more noticeable to begin with investigations not of mass but of individual psychology, and most of all with the psychology of the nursery and the kindergarten.

Entire conformity exists on two points of formal significance. First it has been argued that the whole question as to what are the causes of war and of crime is wrongly put, and that we should rather ask: Why is there so much peace and so much law-abidingness in the world? Yes; perhaps we should; but in this matter, as in so many others, we are content to follow the traditional course.

Secondly historical and criminological researches alike have taught us that in both fields events usually take a much longer time to exhibit their full consequences than may be expected by the uninitiated. The long view has to be applied to the causation of both war and crime. Similarly Aristotle's dictum that wars may arise out of small occasions but seldom from small causes <sup>1</sup> is equally true of crime.

A point which seems to be of great interest is the question whether in the history of the scientific treatment of the problem there are any analogous trends between theories on the causes of war and those on the causes of crime. In other words: do we find, for instance, that an age which favours

<sup>1</sup> Quoted by Mr. Ivor Thomas in *War and Democracy*, edited by E. F. M. Durbin and G. E. G. Catlin (1938), p. 206.

the anthropological interpretation of crime shows corresponding tendencies with regard to war, while in a period when economic factors are pushed into the foreground by criminologists preference will be given to such factors as far as the causation of war is concerned? It could at least be expected that something of this kind might happen. Ideas, it has been said, have their climate, and it would be strange if this climate should differ considerably in the garden of criminology from that in the neighbouring park where the philosopher of history takes his daily exercise. And we indeed find that, to give two examples only, Darwinism and Freudianism had somewhat similar consequences in both cases. On the shoulders of Darwin stood not only Lombroso, with his theory of the anthropological type of the born criminal, but also the new idea of war as a biologically conditioned phenomenon necessary for the evolution and the progress of the human species.

For the sake of convenience criminologists habitually distinguish between physical, psychological, social, and economic causes of crime. The same distinction can, also for the sake of convenience rather than as a matter of scientific exactitude, be applied to the causes of war. And in both cases it has been generally recognized that there is hardly ever one single factor to which the final result can be exclusively ascribed. The doctrine of multiple causation holds good for both problems.<sup>1</sup> Even where a particular war may

<sup>1</sup> As to war, see, for instance, Durbin and Bowlby in *War and Democracy* (1938), p. 28; Pitirim A. Sorokin, *Social and*

rightly be called a "one man's crime," in using this formula we mean hardly anything more than the fact that the activities of one individual have been solely responsible for the *final* outbreak. In this narrow sense we can just as well, in the realm of crime, ascribe the responsibility for a particular criminal act to one single factor. As soon, however, as we concern ourselves with an analysis of the "deep underlying causes," we shall always be faced with a multiplicity of them. Such a multiplicity of causal factors does, moreover, in no way exclude the possibility of making criminally responsible the individual or individuals who have contributed to the outbreak of a war. Historians and international lawyers are sometimes too prone to conclude that a multiplicity of causal factors is altogether incompatible with the fixing of criminal responsibility.

Physical and mental factors may be of a hereditary or a non-hereditary character, and surely, of the many considerations which may render difficult the drawing of analogies between causes of war and causes of crime one of the weightiest seems, at the first glance, somehow connected with the idea of heredity. Here the fact that war, more than crime, is a group phenomenon must be of some practical consequence. When attempting to explain the genesis of a given war we are more often than not forced to go back and back again,

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*Cultural Dynamics*, Vol. III (1937), pp 372 *et seq.* We cannot, therefore, concur with Mr. E. Mousley's view that, "speaking generally, the causes of war proceed from one cause only—the absence of a single supreme power" (*Man or Leviathan?* (1939), p. 49).

perhaps over centuries, into the whole history of the relations between the two countries involved, since without taking into account this long story of previous rivalries and enmities the new outbreak may appear inexplicable. It is the conception of the "hereditary enemy," the German *Erbfeind*, which helps us to understand, if not the real causes of a given war, at any rate the ease with which the aggressiveness of a nation can, almost at a moment's notice, be turned against a certain neighbour, while the war-mongering Government might have to exert much stronger pressure to make the people war-minded against another neighbour, not yet branded as the traditional *Erbfeind*.

Is there anything analogous to such a state of hereditary enmity in the realm of crime? Here the hereditary foe would, of course, usually be the State and the privileged classes of society. The nearest parallel may be offered by what has always been one of the favourite items of the anthropological school of criminologists—the conception of the "criminal family." Soon after Lombroso published his first books there began to appear that long series of studies which set themselves the object of proving the existence of families who had for generations been engaged in criminal activities. In some of these investigations even whole towns or villages, particularly in Italy, have been described as centres of hereditary criminality from the Middle Ages up to modern times.<sup>1</sup> Another

<sup>1</sup> See, e.g., Hans Kurella, *Die Naturgeschichte des Verbrechens* (1893), pp. 135 *et seq.*



example may be found in the so-called "criminal tribes" of India, which, "ever since the dawn of Indian history," have constituted a source of danger to the administration.<sup>1</sup> There is little wonder that in Nazi Germany, with its fanatical belief in the power of heredity, investigations into the history of gypsies and other "criminal tribes"—sometimes alleged to be extended over ten generations—have become popular of late.<sup>2</sup> Up to now it can hardly be claimed, however, that the available knowledge is accurate and detailed enough to be of any use for the study of the behaviour of bellicose nations.

But, even apart from such attempts to interpret criminality as conditioned by physical transmission from one generation to the other, we have become used to the existence in all big cities of a class called the criminal "underworld" or, to use Mark Benney's conception, the "wide people," for whom none of the ordinary State-approved standards of life exist and whose members, influenced by their surroundings from infancy onwards, regard the State and the ruling classes as their hereditary foes. Attacks against these enemies and everything that belongs to them can be brought into motion by orders of the leaders as readily as a war-minded nation may be turned against a neighbour who has become branded as a "hereditary enemy." And when dealing with crimes of this type we may regard the individual

<sup>1</sup> See, e.g., B. A. Saletore, *The Wild Tribes in Indian History*, 1935; G. W. Gayer, *Lectures on some Criminal Tribes in India*, 1910.

<sup>2</sup> See, e.g., F. Exner, *Kriminal-Biologie* (1939), p. 155.

law-breaker as just as much or as little responsible for his actions as each individual member of the aggressor nation; both are simply carrying on a form of behaviour established and sanctified by a long tradition. With hereditary transmission in its proper meaning all this has, of course, nothing in common; it is simply the power of tradition which, handed down from generation to generation, becomes an active cause of war and crime.

In the life of the individual as well as of the State this power of tradition may lead to recidivism, which will be discussed later.

### *Physical Causes.*

An interesting aspect of the physical factors in the causation of war and crime is the influence of climate. Does evidence exist that certain types of climate are particularly favourable for the production of war and crime?

In the nineteenth century investigations into the effect of climatic conditions upon the frequency and the character of crime were among the most common topics of criminological research, and the principal conclusion drawn by Guerry, Quetelet, Ferri, Oettingen, Morrison, and others has been to show that crimes of violence are particularly prevalent in southern regions, whereas crimes against property flourish more in a moderate climate. This is only what would be expected. On account of the inherent difficulties of international criminal statistics, such comparisons were largely limited to the various parts of the same

country. Moreover, a great deal of material has been produced in many countries to show that crimes against the person, in particular sexual offences, are more prevalent in summer than in winter, whereas the opposite is true of crimes against property.

Famous among the first attempts of this kind are the following index figures for the years 1826-30 :—<sup>1</sup>

	Crimes against the Person. (Per million of population.)	Crimes against Property.
Northern France .	2.7	4.9
Southern France .	4.9	2.3

Still more striking are the corresponding contrasts in Italy, as shown at the end of the last century by Cesare Lombroso :—<sup>2</sup>

Number of homicides and highway robberies per 100,000  
of the population in

Northern Italy . . . . .	7.22
Southern Italy . . . . .	31

In Tsarist Russia murder and manslaughter were four times more frequent among Caucasians and Armenians than among Russians proper. Little wonder, then, that northern Eskimos, we are told, very rarely commit crimes at all and do not even reclaim property stolen from them.<sup>3</sup>

More recently a similar investigation was made by an American scholar, Dr. H. C. Brearley.

<sup>1</sup> A. M. Guerry, *Essai sur la statistique morale de la France*, Paris, 1833, p. 10, gives only the absolute figures.

<sup>2</sup> Cesare Lombroso, *Crime . Its Causes and Remedies*, p. 13.

<sup>3</sup> Maurice Rea Davie, *The Evolution of War* (1929), p. 47 ; W. A. Bonger, *Criminality and Economic Conditions* (American edition, 1916), p. 383.

Examining the regional differences in homicide rates between the various States of U.S.A. for the ten years' period 1918-1927, he was able to show that the rate was highest for the South and lowest for the North, ranging from 29.55 per 100,000 of the population in Florida to 1.43 in Vermont. <sup>1</sup>

In an American standard work on *Civilization and Climate* <sup>2</sup> the attempt has even been made to put forward climatic influences as an explanation of the fact that an otherwise so respectable city as Boston has, in proportion to its population, six times as many murders as London. The sudden fluctuations and extreme contrasts of the American climate, it is maintained, are apt to produce a condition of nervous irritability conducive to acts of violence. If this be true the rarity of war in the U.S.A. would have to be ascribed either to the function of crime as an efficient substitute for war or to the working of other stabilizing factors which have a greater effect in preventing war than in restraining crime.

On the other hand corresponding differences have also been discovered between the east and the west of Europe, the former having a considerably higher rate of crimes of violence, although its climate is, if anything, much colder than that in western countries of the same degree of latitude. It is by no means rare to find that people living under exactly identical climatic conditions differ enormously in their degree of delinquency. As far as

<sup>1</sup> H. C. Brearley, *Homicide in the United States*; The University of North Carolina Press (1932), p. 18.

<sup>2</sup> Ellsworth Huntington, *Civilization and Climate* (Third edition, 1924), p. 404.

Scandinavian countries are concerned—as the painstaking researches of the Finnish statistician Dr. Veli Verkko and others have shown—murder and manslaughter are at least twenty times as frequent in Finland as in Sweden, Norway, and Denmark, which latter countries, together with Great Britain, represent the most favourable picture in Europe in this respect. In Germany crimes of violence are most frequent in the big seaports and in alcohol-producing districts, whether they belong to the south, east, or west of the country. On the other hand the north-western provinces show—with the exception of the ports—a consistently low degree of delinquency.

For such reasons the tendency has recently become prevalent to treat climate as a factor which has to be regarded as only one of many elements determining the character of crime in a given country. In an age largely dominated by the conception of race it is only natural that attempts should have been made to use this as at least one explanation of phenomena which could not be ascribed to climatic conditions. The best material for the study of racial characteristics in crime is certainly offered by that melting-pot of humanity, America. Recently this much-discussed problem has been re-examined by the well-known Harvard anthropologist, Professor E. A. Hooton,<sup>1</sup> whose discoveries are largely a confirmation of previous findings. The Italian-Americans, for instance, loyal to their traditional inclinations, are found to be “unpleasantly conspicuous” in

<sup>1</sup> *Crime and the Man* (Harvard University Press), 1939.

murder and assault. Immigrants from southern and eastern Europe are responsible for approximately two to four times as many convictions as those from northern and western Europe.<sup>1</sup>

How far the climate has been responsible for wars is hardly less difficult to decide. Lombroso, who opens one of his principal works with a detailed discussion of the influence of climatic factors on human behaviour,<sup>2</sup> maintains that a "relatively moderate degree of heat" is most apt to produce a bellicose disposition of mind, while in cold countries the mind is placid and mild. This, he concludes, is why the Eskimos are so pacific that they have not even a word for "quarrel," and why Russia has so rarely experienced revolutions.<sup>3</sup> While leaving it to others to deal with Russia, we may well hesitate to pronounce judgment about the Eskimos, since other writers assert that incessant warfare is the rule among them. The explanation is, however, not far to seek. War, we are told, indeed exists among Eskimos, but only among those living in the milder, more densely populated regions, where the struggle for existence is less against nature than against competing neighbours.<sup>4</sup> Even without these instances, the Russian-Finnish War provides sufficient evidence

<sup>1</sup> Donald R. Taft, *American Sociological Review*, Vol. I (1936), p. 732.

<sup>2</sup> Cesare Lombroso, *Crime: Its Causes and Remedies* (American edition, 1911), pp. 1 *et seq.*

<sup>3</sup> Lombroso, as we may remind our readers, died in 1909.

<sup>4</sup> See M. R. Davie, *op. cit.*, pp. 46 *et seq.*; R. S. Steinmetz, *Soziologie des Kriegeres*, p. 66; A. M. Carr-Saunders, *The Population Problem* (1922), p. 150 (see also the discussion on the various causes of war, pp. 305 *et seq.*).

that excessive cold at least discourages warfare in those regions.

A few scholars, mainly Americans, have made tremendous efforts to tabulate the proportion of war years to peace years for the principal countries.<sup>1</sup> The fragmentary material at their disposal is, however, much too inconsistent to support the theory that climate has been responsible for the frequency or otherwise of war. If, for instance, in one of these computations Germany is represented with war periods amounting to twenty-eight per cent. of her historic time, Italy with thirty-six, France with fifty, England with fifty-six, and Spain with sixty-seven, it is obvious—and stressed by the author (Sorokin) himself—that such differences are largely due to the splitting up of Germany and Italy into dozens of tiny territories, which makes it almost impossible to give any reliable account of their warlike activities. Moreover, chronological tables of this kind are unable to furnish any clues as to the bellicosity of the respective countries, as no distinction is made between aggressive wars and wars of self-defence.

As to the seasonal distribution of acts of warfare, we are informed <sup>2</sup> that, while in the Middle Ages ninety per cent. of the battles fought in Europe were fought between April and November, the percentage has now fallen to seventy-eight. Interesting as this may be it is not very helpful when we attempt to draw some analogies between

<sup>1</sup> See, e.g., Q. Wright, *op. cit.*, p. 29; Sorokin, *op. cit.*, p. 352.

<sup>2</sup> Q. Wright, *op. cit.*, p. 31.

war and crime. World wars, it is true, tend to begin in August–September, but are they more closely akin to crimes against the person (which, as already mentioned, are also more frequent in the hottest time of the year) or to crimes against property? Moreover, are the reasons for this state of affairs to be sought more in the minds of the war-mongers or in the physical condition of the countryside and of the air? We may think that all those isolated statistical figures, of which our nineteenth-century predecessors were so proud, can be properly interpreted only in closest connection with a multitude of other highly complex factors.

It may well be that a close analysis of the available material might show a greater frequency of crimes of violence and revolutions in southern countries and more wars in northern regions, owing to the fact that the southern races are more individualistic and, as at least Lombroso thought in those pre-Fascist days, more inclined to subordinate the interests of the community to private interests.

There exists, one might imagine, a world of difference between the biological conceptions of war and of crime. It is true that the biological explanations of both rest upon the teachings of Darwin. This name appears on the very first page of one of Lombroso's principal works, and it is Darwinism that—rightly or wrongly—has come to be regarded as responsible for a biological theory of war.<sup>1</sup> In its essence and objectives,

<sup>1</sup> Dr. William A. Robson, *Civilization and the Growth of Law* (1935), p. 321.



however, this biological conception of war differs profoundly from its criminological analogue. War, it is held, is biologically necessary for the evolution and progress of nations or of the human race in general, which without eternal struggle would grow effeminate and perish.<sup>1</sup> The "scientific defence of Imperialism," as J. A. Hobson put it in his spirited attack upon this conception,<sup>2</sup> rests upon the belief that "the earth should be peopled, governed, and developed, as far as possible, by the races which can do this work best," and that "these races must assert their right by conquering, ousting, subjugating, or extinguishing races of lower social efficiency." "History"—to quote Professor Karl Pearson—"shows me one way, and one way only, in which a high state of civilization has been produced—namely, the struggle of race with race, and the survival of the physically and mentally fitter race."<sup>3</sup>

The anthropological and biological theories of crime, on the other hand, do not contend that criminal activities are necessary to secure the aim of natural selection, the survival of the fittest. So the "born criminal type" has been invented as an example of degeneracy and unfitness. Just as the superior races have to fulfil their destinies by making war on weaker ones, so the born criminal may be destined to kill; but his killings are, unfortunately, neither restricted to inferior human

<sup>1</sup> R. S. Steinmetz, *Die Soziologie des Krieges* (1929), is much in favour of this theory; see, for instance, pp. 298 *et seq.*

<sup>2</sup> *Imperialism*, revised edition, 1905, Part II, Chapter II.

<sup>3</sup> *National Life from the Standpoint of Science*, second ed., 1905.

beings nor calculated to assist him to rise on the biological and social ladder.

Surely it was not Lombroso's intention to apply the theory of natural selection to the activities of the born criminal. What he wanted was to maintain the right of society to protect itself by means of an efficient penal system and to regard the war against crime as an application of Darwinian principles. This is a view upon which, in particular, the use of sterilization as a penal method is based. The Nazis, moreover, in their attempts to extirpate the Polish, Jewish, and other races, have had recourse not only to war but also to concentration camps and penal statutes. This has become their practical contribution to the theory of "natural" selection.

Supporters of the biological theory of crime have, from time to time, tried to make out a case for the view that—as Lombroso put it—crime, too, must have, "if not a function, at least a social utility."<sup>1</sup> And, referring to Buckle, he points out that criminal statesmen are less harmful to the nation than ignorant ones, since under their rule at least nobody else is allowed to exploit the community, whereas their colleagues are incapable of preventing such exploitations.<sup>2</sup> According to Lombroso, great achievements like the construction of the Suez and Panama Canals owed their origin, at least partly, to swindling projects.<sup>3</sup> This, he argues, is the reason why

<sup>1</sup> *Crime: Its Causes and Remedies*, p. 440.

<sup>2</sup> Recent revelations have shown how unwarranted Lombroso's claim actually is.

<sup>3</sup> A highly questionable statement, by the way, even with

crime manages persistently to increase, though according to Darwin only organisms useful for the species can survive.

It is hardly necessary to draw attention to the many misconceptions inherent in all such attempts to apply Darwinian ideas to social problems. That war and crime may, in a particular case, have their social merits can be denied only by those who interpret world affairs exclusively in terms intelligible to the Sunday School. This fails to prove, however, that their causes and ends can be conceived on strictly biological lines.

It may not be devoid of interest that one of the most energetic opponents of this glorification of war for biological reasons was a German professor of physiology in Berlin, called Nicolai. Soon after the outbreak of the war of 1914-18 he published a book on the biology of war in which, among other points, he accused the theoretical defenders of war of being wholly ignorant of natural science and of misusing the great name of Darwin for their political purposes. His book was banned in Imperial Germany; he himself was imprisoned for five months and dismissed from his chair. Later he managed to escape from Germany, and his book was published in Switzerland and translated into foreign languages.<sup>1</sup>

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regard to the Panama Canal, and certainly untrue as far as the Suez Canal is concerned, see, e.g., Hugh J. Schonfield, *Ferdinand de Lesseps*, 1937.

<sup>1</sup> English translation by Constance A. Grande and Julian Grande under the title: G. F. Nicolai, *The Biology of War*, 1919.

## *Economic Causes.*

It is not essential for our present purposes to elaborate the economic argument and to make up our minds whether and why Capitalism or any other economic system inevitably makes for war or for crime. These questions we can safely leave to special analysis such as that recently made in Professor Robbins's admirable little book on *The Economic Causes of War*. Some tentative observations of a more general character may, however, be brought forward to establish a few analogies which throw light on our problem. There are, indeed, certain striking analogies of this kind. In both fields the days have passed when the economic interpretation—or, better, the strictly economic interpretation—was preached like a gospel; we have begun to discriminate. We have discovered, for instance, that it is not so much a static condition of absolute poverty as a sudden deterioration in the economic position of people that makes for both war and crime. It is usually not the person most familiar with the direct need of the simplest necessities of life who turns to crime, nor is it the nation of hereditary beggars that proves most bellicose in modern times. Lack of armaments and other vital supplies would make war on its part hopeless from the very beginning.

Poverty in its literal sense can therefore hardly be a frequent cause of war, since it prevents a State from making effective preparations for it. Rather is it the state of mind which accompanies

economic deterioration—the psychology, for instance, of excessive inflation—that prepares a favourable soil. Everyone conversant with the dynamics of inflation in Germany will agree that this event, by destroying not only the German middle classes but—more than that—the feeling of economic and social stability in every class, was chiefly responsible for the growth of those forces which, between 1919 and 1924, made Germany the land of unlimited possibilities in the field of crime and eventually led to the present war. And there is yet another close analogy of an economic character. I am sorry to drag in old Aristotle, but he it was who has said, perhaps a little too pointedly: “The greatest crimes are caused by excess and not by necessity. Men do not become tyrants in order that they may not suffer cold. . . . There are crimes of which the motive is want. . . . But want is not the sole incentive to crime; men desire to gratify some passion which preys upon them. . . .”<sup>1</sup> The greatest crimes! This means that we have to distinguish, in the realm of war, between the mentality of the war-mongering leader and the psychology of his following, and, in the realm of crime, between the motives from which the great masses of petty offences are committed and the mechanism of serious economic crime.

In both fields the motives of the masses may, to a large extent, be traceable to economic facts.

<sup>1</sup> *Politics*, II, 7, 11 and 13 (quoted from B. Jowett's translation, Oxford, 1885, Vol. I). See also W. A. Bonger, *Introduction to Criminology* (English translation, 1936), p. 27.

The leading figures and their actions, however, require other standards of interpretation. We should not be deceived by the common experience that the early life-histories of great war-lords and master criminals alike frequently show the familiar struggle with dire poverty. Purely economic motives may well stand behind their actions in the very first stages of their careers. After a few initial successes, however, the originally economic stimulus becomes replaced by the unremitting pursuit of an "ideal" of an entirely different character, for which the economic factor can provide nothing but a later rationalization. The history of large-scale frauds shows that the driving-force behind them is not poverty but greed. Certain modern criminologists are therefore perfectly right in saying that there are two classes of criminals who commit economic offences: "Those who rob because they are hungry, and those who do so because they are covetous."<sup>1</sup> The great defrauders, forgers, and fire-raisers have not been driven to their crimes by poverty and want; their incentives have been covetousness and greed.

What, however, is the real meaning of these terms? They are certainly not restricted to the craving for money. Vanity, an exceedingly strong spirit of gambling, and lust for power have been the most outstanding characteristics of criminals of this type. Of Horatio Bottomley it has been said that "his one incurable failing" was vanity.<sup>2</sup> Or

<sup>1</sup> Henry T. F. Rhodes, *The Criminals We Deserve* (1937), p. 171, see also W. A. Bonger, *Introduction to Criminology*, p. 81.

<sup>2</sup> S. Theodore Felstead, *Horatio Bottomley* (1936), p. 32.

if we analyse, for instance, the psychology of one of the most notorious international financiers of the present century, the Swedish "Match King" Ivar Kreuger, whose suicide in 1932 shook the world,<sup>1</sup> we find that the essential purpose behind his actions is described as the acquisition of power. He is reported as having once said: "I can work only with people whose backbones I have broken." Again, to quote the words of one of his biographers (Manfred Georg), "Delirious with the illusion of power, he believed that he could conquer a world, which he did not even trouble to understand. . . . It was Kreuger's tragic fault that he was completely blinded by the lust of power, and that his contempt for humanity made him deaf to the misery of the masses. . . ." Another<sup>2</sup> calls him "a megalomaniac with a Napoleon complex," "infected with the mania for power," who occasionally even lapsed into a "Napoleon phraseology." Professor E. H. Carr<sup>3</sup> rightly draws attention to Raskolnikov's "I wanted to become a Napoleon; that is why I killed her."

Mr. Harold Nicolson opens his recent book, *Why Britain is at War*, with a striking parallel between Hitler's technique and that of George Joseph Smith, the "hero" of the famous "Brides in the Bath" case. There are, no doubt, many

<sup>1</sup> See especially Manfred Georg, *The Case of Ivar Kreuger* (translated from the German, Jonathan Cape, London, 1933); Georg Soloveytchic, *The Financier: The Life of Ivar Kreuger* (Peter Davies, London, 1933); Trevor Allen, *Ivar Kreuger, Match King, Croesus, and Crook* (1932).

<sup>2</sup> T. Allen, *op. cit.*, pp. 19, 81.

<sup>3</sup> E. H. Carr, *Dostoevski* (1931), p. 192.

close similarities which he rightly stresses—above all the supreme significance of the element of repetition—which finally destroys any prospect of further success. In spite of them, the author shows himself fully aware of one essential contrast. While, in his words, George Joseph Smith “was a sensualist and wished to accumulate money, Herr Hitler is an ascetic and desires only to accumulate power.”<sup>1</sup> For this reason it might have been illuminating to replace Mr. Smith by one of those habitual criminals who are driven less by the economic motive than by lust for power. There is, however, another point where Mr. Harold Nicolson’s analogy is justified, and here we are touching a point of great criminological interest. “To the very end,” he writes with reference to G. J. Smith,<sup>2</sup> “he remained convinced that there had arisen some misunderstanding between himself and society and that the latter were at fault in not recognizing that so great a genius stood above the rules and regulations by which lesser mortals are constrained.” Just so Hitler fails to understand why at least certain parts of the world outside the Axis cannot yet fully appreciate the lofty ideals laid down in *Mein Kampf*.

World literature has presented us with other examples greater and more convincing than the rather petty hero of the “Brides in the Bath” case—examples of criminals who had succeeded in building up a system of delusions which enabled them to claim for themselves a new set of moral values under which any crime they might have

<sup>1</sup> Harold Nicolson, *op. cit.*, p. 14.

<sup>2</sup> P. 13.



committed could be justified. It is Nietzsche's idea of the superman that forms the subject of an essay written by Dostoievski's Raskolnikov shortly before he commits his murder and in which he sets forth the idea that "all men are divided into 'ordinary' and 'extraordinary.' Ordinary men have to live in submission, have no right to transgress the law because they are ordinary. But extraordinary men have a right to commit any crime and to transgress the law in any way, just because they are extraordinary." <sup>1</sup>

Obvious as are the spiritual links between Raskolnikov and Nietzsche, it might be equally tempting to speculate about the former's relations to the Russian pan-slavistic movement of that period. It seems, however, to have been Dostoievski's intention to use this figure for his attack upon Atheism, Nihilism, and Individualism rather than upon Pan-slavism.<sup>2</sup>

Or we may take Henrik Ibsen's John Gabriel Borkman who, having spent several years in prison for fraudulent conversion and bankruptcy offences, after his discharge gives the following account of himself:—

*J. G. Borkman* : "I have re-tried the whole case—by myself. Time after time I have re-tried it. I have been my own accuser, my own defender, and my own judge. I have been more impartial than any one else could

<sup>1</sup> *Crime and Punishment* (translated by Constance Garnett; London, William Heinemann), p. 236.

<sup>2</sup> See, in particular, T. G. Masaryk, *The Spirit of Russia* (English translation 1919), Vol. II, pp. 148, 267 and *passim*.

be. . . . And the final judgment I have always come to is this: the one person I have sinned against is—myself . . .”

*Mrs. Borkman* : “ And what about me? What about your son? ”

*Borkman* : “ You and he are included in what I mean when I say myself.”

*Mrs. Borkman* : “ And what about the hundreds of others, then—the people you are said to have ruined? ”

*Borkman* : “ I had power in my hands! And then I felt the irresistible vocation within me! The prisoned millions lay all over the country, deep in the bowels of the earth, calling aloud to me! They shrieked to me to free them! But no one else heard their cry—I alone had ears for it. . . . If the others had had the power, do you think they wouldn't have acted exactly as I did? ”

*Mrs. Borkman* : “ No one, no one but you would have done it! ”

*Borkman* : “ Perhaps not. But that would have been because they hadn't my brains. And, if they had done it, it would not have been with my aims in view—the act would have been a different act. In short, I have acquitted myself.” <sup>1</sup>

This is the psychology of the great criminal as well as of the great war-monger.

<sup>1</sup> *John Gabriel Borkman*, English translation by W. Archer, pp. 135 *et seq.* (London, William Heinemann). The author is indebted to Messrs. William Heinemann Ltd. for their permission to quote this extract.

Of all the familiar types of war it is the imperialistic war that can best be explained by reference to the state of mind responsible for large-scale frauds. A Kreuger, on the other hand, may well be called an "imperialist" among criminals. The theoretical foundations of Imperialism, it is true, may be closely connected with biological doctrines; economic motives may also frequently occupy the foreground of the picture. Nevertheless imperialistic war still remains essentially a war fought not for the sake of material advantages—as, for instance, in order to annex a territory needed for certain clearly realized and reasonable economic purposes—but a war of expansion where expansion becomes an end in itself. It is, as a German economist put it in a study on the sociology of Imperialism published immediately after the last war, a type of war arising from the "objectless disposition of a State to expansion through force without any definite limits."<sup>1</sup>

Admirable as are the existing psychological interpretations of imperialistic war, many interesting sidelights and explanations might be added to them by drawing comparisons with corresponding criminological types. It is particularly illuminating to observe how such a tendency towards unlimited expansion inevitably leads in the case of the individual to crime and, if such an individual unfortunately happens to have the resources of a State behind him, to war.

<sup>1</sup> Joseph Schumpeter, *Archiv für Sozialwissenschaft & Sozialpolitik*, Vol. 46 (1918-19), p. 3. Perhaps the best recent discussion of the whole problem is to be found in Prof. W. L. Langer's *The Diplomacy of Imperialism*, Vol. I (1935).

All this, it may be repeated, by no means amounts to a complete repudiation of the economic interpretation. Economic causes are, on the contrary, responsible for the majority of petty offences, and they supply the war-monger with those hosts of supporters whom he needs for his nefarious purposes. The existence of vast numbers of unemployed young men and women, without pocket-money and cursed with the emptiness and boredom of the half-educated—in short, the existence of what H. G. Wells calls “Unsated Youth”<sup>1</sup>—is one of the primary sources of unrest in the world. Whether this unrest explodes as war or as crime may largely depend upon chance and the available opportunities for collective action.

### *Psychological Causes.*

Our brief remarks on the rôle of the economic forces behind war and crime have already shown that without a psychological analysis any causal research of this kind must remain fragmentary. With regard to war it is not surprising to see that the psycho-analytical and the individual-psychological interpretations dominate the field. Though it would be wrong to say that they entirely neglect the social and economic factors, it is only natural that they should relegate them somewhat to the background. By doing so they weaken the part played by the group-factor in war and prepare the soil for a further assimilation of war and crime. Aggressiveness (largely as a result of fear), the

<sup>1</sup> *The New World Order* (1940), § 5.

defence situation, the love-hatred situation, the need for a scapegoat, the use of the symbol—all these and many other psycho-analytical conceptions can be, and most of them quite rightly have been, used to explain both war and crime.

It is in particular the psychology and sociology of the first five years of life that have to be scientifically investigated if we want to obtain some knowledge of the real causes of both.<sup>1</sup> From the point of view of the psycho-analyst it is the experience of earliest childhood and, to a smaller extent, also the method of treatment which the individual later has to suffer within his family and from his Government, that are decisive for his aggressiveness within and without. Just as those children who are birched at home prove particularly aggressive,<sup>2</sup> there is also sufficient evidence to show that tyrannic Governments breed in their own citizens aggressive attitudes towards other peoples.

Mr. Durbin and Dr. Bowlby regard the theory that war is due to the fundamental and unchangeable aggressiveness of all mankind as unduly pessimistic, and they lean to the more comforting formula that "war, like crime, is the result of the existence of anti-social minorities,"<sup>3</sup> which leaves more room for the hope that the peaceful majorities may be able to control and to cure those unruly minorities. This view, one might be

<sup>1</sup> See, e.g., Dr. E. Glover, *British Journal of Medical Psychology*, Vol. XIV (1934), p. 275.

<sup>2</sup> Durbin and Bowlby, *op. cit.*, p. 72, quoting from Dr. Susan Isaacs, *Social Development in Young Children* (1933).

<sup>3</sup> *War and Democracy*, p. 41.

inclined to say, is true rather with regard to crime than with regard to war, where the peace-loving majorities have more conspicuously failed to control the trouble-makers than in the case of crime. But how far is it true at all? Would it not be more accurate to say that, while aggressiveness may well be a feature common to the majority of human beings, its restriction by force or by repression or by sublimation has nevertheless proved possible? It is exactly this process that has hitherto been more successful in crime than in war.

Even in the case of crime, however, to attribute it solely to the existence of anti-social minorities means restricting our analysis to the very small group of fundamentally anti-social professional criminals, to the neglect of the far larger group of occasional offenders. It would perhaps be somewhat unfair to use against these authors arguments based upon quite recent events which were unknown to them. But, surely, even a few years ago it was hardly convincing to labour the point that in both the Manchurian and Abyssinian wars "nine-tenths of the nations of the world" were opposed to the outbreak of these wars. True as this probably is, such a praiseworthy attitude was largely due not to any fundamental aversion from war as such but only from a war which did not involve their personal interests and passions. It is a tragic fact, which we should do well to recognize, that these peace-loving majorities are, in every single instance, differently composed. According to Mr. Malcolm Muggeridge,<sup>1</sup> "an

<sup>1</sup> *The Thirties* (1930-1940 in Great Britain), p. 164.

aching tooth is more woeful than Hitler"—(*nota bene*, for the masses, if the tooth is their own and Hitler happens to be attacking somebody else).

We have been slightly more successful in our treatment of crime for several reasons. Without desiring to discuss them here in detail,<sup>1</sup> we may perhaps be permitted to submit one of them for preliminary discussion: It is the fact that in the realm of crime there has not been established—nor is there likely to be established—any real co-operation between the master criminal and the masses of petty offenders. For this reason it is easier for the forces of law and order to control them. The great war-mongers, on the other hand, have only too frequently succeeded in establishing such a unifying link between their own ambitions and those of the masses by investing themselves in the cloak of patriotism. The supporters of Federal Union are confident that this situation can be avoided by the elimination of national States and nationalism which will go a long way to destroy such links between leader and follower. The cause of war, so they argue, cannot be "original sin" or, in modern terminology, inborn aggressiveness, because the fighting fever shows itself in none of those many other groups formed by human beings, such as counties, towns, trade-unions, and so on. It cannot, therefore, be inherent in human nature.

Why, asks Mr. W. B. Curry,<sup>2</sup> do Pennsylvania

<sup>1</sup> See below, Chapter VII.

<sup>2</sup> *The Case for Federal Union* (Penguin Special), pp. 33 *et seq.*

and New Jersey never dream of fighting bloody wars against each other? Because, he replies, they have federal institutions for the peaceful settlement of their common affairs, and because their patriotism "is not the monstrous and hysterical group-egotism it has become in Europe." This being so, the question arises whether the creation of federal institutions is likely to destroy that bestial group-egotism that is at present ravaging Europe. How far can institutions change the minds of men? This would seem to be the crucial question. The problem is not whether Federal Union represents, as such, from the administrative-technical point of view the ideal form of government—a claim which may be beyond doubt. The problem is whether, once established, it would succeed in overthrowing that European group-egotism, firmly entrenched through centuries.

Surely these American analogies are here of little value. New World history can in no way be compared with our own. Diseases which can easily be cured in their initial stages may, after awhile, become fatal. Even new institutions, like new sera, must be applied in good time. It may thus well happen that European nations, deprived by the establishment of a Federal Union of their previous opportunities of fighting each other as States, may as counties find ways and means of continuing their struggles. An American scholar<sup>1</sup> has reminded us that an external enemy has ever been regarded as indispensable for the

<sup>1</sup> Quincy Wright, *The Causes of War and the Conditions of Peace* (1935), pp. 14, 24.



preservation of internal solidarity, and he quotes the example of certain tiny Pacific island tribes, a few hundred individuals strong, who had to be split in two for this purpose. Experiences like these are in conformity with the sceptical view of well-known psycho-analysts that even Pacifism itself is only another form of bellicosity,<sup>1</sup> and with the behaviour of that conscientious objector who, after a hearing which he regarded as unsatisfactory, forthwith went and stabbed the judge.<sup>2</sup>

There is hardly anything in the above statements that would seem to be irreconcilable with the views put forward in Dr. Karl Mannheim's recent illuminating discussion of the problem.<sup>3</sup> We can well admit that there are no such "definitely shaped instincts as aggressiveness or acquisitiveness. Rather, we can only say that there are instinctive tendencies, originally vague, which adapt themselves to varying circumstances, and can be shaped by society." And we can further concede that "there is no need to build up a social order on the basis of aggression and combat," and even that "there is nothing in the so-called fighting instinct which makes inevitably for war. . . . Once the very structure of a social order is so built as to avoid war it can, by the control of education, prevent the forming of warlike attitudes. . . ." We find difficulty in believing, however, that all these latent potentialities will ever

<sup>1</sup> Dr. E. Glover, *British Journal of Medical Psychology*, Vol. XIV (1934), p. 277; *War, Sadism, and Pacifism* (1933), pp. 91-2.

<sup>2</sup> See the case reported in *The Times*, April 6, 1940.

<sup>3</sup> *Man and Society in an Age of Reconstruction*, pp. 121-23.

become realities, particularly as we cannot bring ourselves to admit that "the innate psychological equipment of men leaves equally open the possibility of their becoming either warlike or peaceful."

How far has the desire for punishment—surely one of the most interesting conceptions of psycho-analytical theory—any part in the causation of war? It has actually been argued that, just as certain crimes are committed because of such a desire for punishment, "the very fact that we lose so much by wars is one of our motives for fighting. . . . Any change in the economic system that made wars still more unprofitable would increase an unconscious motive for them at the same time that it decreased a conscious one."<sup>1</sup>

Hardly less fruitful than the application of psycho-analytical terms is the terminology of Individual Psychology in this connection. Frustration, inferiority complex and inferiority feeling, self-centred mentality, incapability of co-operation with others, rank among the most frequent causes of war and crime. There are, of course, some difficulties to overcome, certain points which seem to require clarification. If we should assume, for instance, that it is only the weak individual or weak nation that suffers from an inferiority complex, should we not expect that small nations would be particularly prone to acts of aggression to compensate for that feeling? Such an interpretation, however, would probably be contrary to the true intentions of Individual Psychology,

<sup>1</sup> Roger Money-Kyrle, *British Journal of Medical Psychology*, Vol. XIV (1934), p. 351. See also E. Glover, *War, Sadism, and Pacifism*, pp. 57 et seq.

the essence of which is that practically everybody is a potential sufferer from an inferiority feeling. Inferiority is a relative conception. In some respect everybody may feel himself inferior in relation to somebody else: the child in relation to the adult; the nation which regards itself as "young," as a new-comer, in relation to the older *Kulturvölker*; the old ones because of their lack of youthful vigour; the "have-nots" in relation to the "haves"; the latter because their wealth may have been acquired by objectionable methods—and so forth *ad infinitum*.

Criminologists who want to know why this ubiquitous complex should lead to crime have to consider that the commission of a crime is one of the surest ways to draw attention to one's person, to become a centre of interest, to stand in the limelight. Consequently it is a possible method of compensating for the inferiority feeling. The same applies to the bellicose attitude of a nation; a persistent blowing of the war-trumpet is the surest way to publicity until you have talked so much war that you cannot withdraw without destroying your artificially acquired prestige beyond any hope of repair. One of the conclusions which might profitably be drawn from this state of affairs is that there might be less crime if less publicity and sensation were attached to it, and less war if the world at large would not let itself be so fascinated and intimidated by the public performances of war-mongering orators.

Inferiority feeling is usually characterized by lack of ability to co-operate with others. As

Alfred Adler expressed it:<sup>1</sup> "The goal of the criminal is always to be superior in a private and personal manner. What he is striving for contributes nothing to others. . . . A criminal is not interested in others. He can co-operate only to a certain degree. When this degree is exhausted he turns to crime."

Although this would seem to be formulated in a much too apodictic and generalizing way, there is surely no need to comment upon its applicability to the causation of war.

Dr. William Brown has argued<sup>2</sup> that Germany, between the wars, was not suffering from an inferiority complex or inferiority feeling in the technical sense but from the opposite sense of power and worth, coupled with the feeling of having been unjustly treated. Without attributing too much significance to such distinctions it may be replied that the very violence and boundlessness of the German reaction would rather seem to refute Dr. Brown's view. Nations or individuals that feel themselves outraged because their worth is not recognized by others may well try to assert themselves by violent methods, but their sense of justice will make them stop once this aim is achieved. Even a Kohlhaas resigned and gave himself up for trial as soon as his original claim was solemnly recognized by the authorities. Only the victims of an inferiority complex know of no moderation. It is a misinterpretation, only too

<sup>1</sup> *What Life Should Mean to You* (1932), pp. 200 *et seq.*

<sup>2</sup> In a letter to the *Times* of Nov. 23, 1934, reprinted in his book *War and Peace* (1939), p. 22.

well known to criminologists, to assume that serious acts of violence are committed out of superabundant strength and energy. In actual fact the more outrageous and cruel the crime, the more likely is the diagnosis to be one of weakness and inferiority feeling in the offender.<sup>1</sup>

Crime and war occasionally originate in a feeling of injustice. Such a feeling of having been unjustly treated may arise from the most insignificant reasons or it may have no actual foundation at all. The classical example is to be found in Heinrich von Kleist's masterly novel *Michael Kohlhaas*, which describes with extraordinary power and psychological refinement the history of a man who "up to his thirtieth year a model of good citizenship, turned murderer and robber from an outraged sense of justice." As this man was refused proper compensation for a flagrant violation of his rights of property, he resorted to violence and to terrorization of his neighbours until the land was in a state of anarchy. Curiously enough, Nazi writers show no particular liking for this striking historical figure; in their eyes he is nothing but an extreme individualist, a criminal who did not hesitate to sacrifice the interests of his country to his personal vindictiveness. How can their criticism be brought into line with the Nazi claim that anything—even complete annihilation of other nations—is justified that may serve to restore what they regard as the disturbed sense of justice in the world?<sup>2</sup>

<sup>1</sup> See, for instance, the cases described by Andreas Bjerre, *The Psychology of Murder*.

<sup>2</sup> See also Ian G. Colvin, "The Jurist Who Rebelled," in the *Nineteenth Century and After*, June, 1940.

Kohlhaas, by the way, had a predecessor in Schiller's Karl Moor (*The Robbers*), who ends his career with the words: "What a fool I have been to imagine that I could vindicate law and order by means of anarchy. I called it justice and revenge, but now I can see that two men like myself would destroy the whole moral structure of the world!"

A problem of special significance that may call for discussion in this connection is that of recidivism. There is a truly horrible similarity between relapse into crime and relapse into war—a similarity that has repeatedly been stressed, and usually with a strong dose of scepticism. So, for instance, by Dr. William Brown, who writes:<sup>1</sup> "Those who take part in war customarily declare that when they have finished this business they will fight no more. The protestation has much the same value as that of the drunkard who exclaims as he lifts the glass to his lips that it is the last time."

Sometimes the claim is made that even the most inveterate type of drunkard may, in rare cases, be cured if appropriate methods are applied. Dr. William Brown's analogy may remind us of the various explanations brought forward for the failure of the Inebriates Act of 1898 to effect a real improvement in the methods of dealing with habitual drunkards. Was this failure mainly due to the then prevailing lack of scientific knowledge of how to deal with such cases, or to lack of enthusiasm, or to disinclination to bear the expenses for the maintenance of adequate institutions, or perhaps

<sup>1</sup> *War and Peace* (1939), p. 28.

to the fact that most cases came too late to the knowledge of the authorities concerned, and consequently received treatment at a time when their condition had already become hopeless?

What, then, we may ask, are the principal sources of this suicidal urge for relapse into war? It is here that certain experiences of criminology may be particularly helpful in our attempts to solve the riddle of recurring warfare.

Not all, but certainly a great number of cases of recidivism are due to the wrong treatment which the offender has received for his previous offences—treatment that may be inappropriate either on account of its undue severity or on account of its undue leniency, or simply because it was unsuitable for just this particular type of offender. The more frequent and the more serious are the convictions of an offender, the greater is the probability of his relapse into crime.

The analogous complaint—that wrong methods for the formulation of peace terms have been responsible for later wars—is also well known to us from the way in which the Treaty of Versailles, and in particular its War Guilt Clause, has been exploited by Hitler to justify all his breaches of international law. This clause, to a certain extent, has had similar effects upon the German mind as humiliating, stigmatizing methods of punishment—corporal punishment, for instance—frequently have upon the criminal: instead of preventing relapse into crime they may provoke it. There hardly exists a finer psychological analysis of the effects which the imposition of the war guilt clause has had

than that given by Sir Arthur Salter in his recent book, *Security: Can We Retrieve It?*<sup>1</sup> As he points out, "the terms of the Versailles Treaty would never have evoked in post-war Germany the intense bitterness of feeling which they did if they had been imposed simply as the penalty of defeat and not as a punishment inflicted on a legally condemned criminal."

It is perhaps not without interest to note that in 1930—three years before Hitler came into power—one of his oldest friends, the present Reichsminister of the Interior Dr. Frick, then a member of the Reichstag, brought in the following motion: <sup>2</sup> "Any person who publicly asserts Germany's sole or partial guilt in the Great War, or who accepts new obligations based on the war guilt lie, shall suffer the penalty of death."

The student of recent European history can have but little doubt as to the tremendous power of imitation in provoking acts of violence. First, Hitler imitates Mussolini, later Mussolini finds himself obliged to imitate his pupil. One dictator breeds three, and one war a whole brood of other wars. This conduct, or rather misconduct, of world affairs reminds us only too forcibly of Tarde's theory that imitation is the principal source of crime. Without indulging in cheap generalizations we may well say that there is a greater amount of truth in his discovery than most of our predecessors were ready to admit. The more

<sup>1</sup> *Security: Can We Retrieve It?* (1939), pp. 321 *et seq.*

<sup>2</sup> Quoted from Hermann Kantorowicz, *The Spirit of the British Policy and the Myth of the Encirclement of Germany* (English translation, 1931), p. 502.



spectacular and daring the exploits of a criminal the higher the probability of his making proselytes. This may happen irrespective of his final success. The murderer who invents some original method of killing can rest assured that his technique will be imitated even after his execution. It is the initial achievement—the killing—that matters. St. Helena, in itself much too lenient a punishment, has proved no deterrent to Hitler.

Suggestion and hypnosis can surely claim a place of honour in the causation of mass crime and of war. Within the last few years a rather amusing change has become noticeable in the Nazi conception of hypnosis and its potential criminological implications. Formerly German scholars preserved a sound measure of scepticism towards the frequent attempts to attribute the responsibility for a crime to hypnotic influences. Among other reservations the point used to be stressed that only a type of person who is already psychologically well prepared to respond to evil influences is likely to become a suitable tool in the hands of an unscrupulous hypnotist.<sup>1</sup> Under the influence of a widely advertised book published in 1937 by a Heidelberg doctor<sup>2</sup> and consisting largely of the description of an actual Court case, the view has, however, been gaining ground in Germany that even persons without any criminal tendencies may

<sup>1</sup> See, e.g., *Handwörterbuch der Kriminologie*, Vol. I, p. 686; Vol. II, p. 757; Albert Moll, *Der Hypnotismus* (Fifth ed., 1924), pp. 522-3.

<sup>2</sup> Ludwig Mayer, *Das Verbrechen in Hypnose* (München, 1937), esp. p. 53. See also the same author in *Monatsschrift für Kriminal-Biologie* (1938), p. 530.

commit serious crimes under hypnotic influences. It may be left open how far the subconscious wish to exonerate the German people from any responsibility for the crimes committed under the Nazi régime was at the bottom of this scientific metamorphosis. The Dutch anthropologist and sociologist R. S. Steinmetz,<sup>1</sup> in his standard book on the *Sociology of War*, argued that it is simply impossible to coerce people into a certain course of action to which, in their hearts, they are opposed. "Peoples and women," he says, "can be seduced only to acts to which they are anyhow inclined," and the really honest man has not yet been found who stole solely under hypnotic suggestion. This was written in 1927, with reference to certain historical events of the year 1914. It would not be devoid of interest to know how far the Dutch scholar might be prepared to apply this theory to the political history of Europe after that date.

<sup>1</sup> R. S. Steinmetz, *Soziologie des Krieges* (1927), p. 326.



PART II

THE INFLUENCE OF WAR UPON CRIME



## CHAPTER III

### GENERAL OBSERVATIONS AND EXPERIENCES PRIOR TO 1914

I. WHEN approaching that part of our subject which may perhaps be regarded as its essential aspect—namely, the influence which war may have upon crime—we have to rid ourselves, as far as possible, of certain preconceived ideas: as, for instance, that which John Galsworthy's juryman, when called upon, during the first stages of the last war, to attend a trial in his official capacity, expressed in the classical words: "There oughtn't to be any crime in these days."

We are here not concerned with what ought or ought not to be, but simply with what is. How can the real facts be arrived at? To assess with even a moderate degree of accuracy the rôle of war as a cause of crime is obviously one of the most difficult tasks of the criminologist. Scientific investigations into causal connections require the presence of at least a certain minimum of all those factors which war practically excludes: stability of the external conditions, an observer with an easy, undisturbed mind, and the necessary technical pre-requisites to the assessment of those factors. In reality the greater the dimensions of a given war, the more difficult is it to obtain such

a favourable combination. Should the world fall to pieces, Archimedes can still draw his circles on the sands; not so the criminologist. He is engulfed in the quicksand, and his implements of labour collapse with the world around him. It is mainly upon statistics of a rather ambiguous character that we have to rely, supplemented only here and there by observations which display a more personal touch. Prior to the coming into existence of official criminal statistics—i.e., up to the beginning of the nineteenth century—criminologists were even entirely dependent on such individual haphazard observations and had to ransack the volumes of general and social history, memoirs, and even the works of poets, to collect some scattered bits of information.

This being so, we cannot be greatly surprised at the scepticism of an American sociologist<sup>1</sup> who opens his brief discussion of the problem with the words: "Does war favour or check criminality? The answer is that we do not know"! The most widely used method of investigation has now become to observe the development of the crime figures in various countries, belligerent and non-belligerent, for the pre-war, war, and post-war periods with the view to finding out some general features in the changes that may have taken place. There are certain obvious pitfalls in such a method, which have sometimes deceived otherwise careful investigators. In the first place criminal statistics usually cannot adequately take

<sup>1</sup> P. A. Sorokin, *Contemporary Sociological Theories* (1928), p. 341.

into account those quantitative changes in the composition of the population which a war, at least a war of some dimensions, almost inevitably produces. Such changes are due principally to the fact that the Army absorbs large numbers of men, thereby withdrawing them from the competence of the ordinary criminal courts, while, on the other hand, the military courts which take their place seldom publish any statistical accounts of their work. The augmentation of the size of the Army would in itself not be sufficient entirely to falsify the results of our statistical labours, if the number of men withdrawn from the civil population were of a calibre and composition representative of the whole civil population. This is, however, obviously not the case. These men are, exclusively or at least predominantly, taken from certain age groups only, and their physical and mental condition has to conform to certain standards which are not necessarily typical of the general population.

In this country, it is true, the age groups between 21 and 30, to which probably the great majority of all members of the fighting forces belong, have in recent years shown a crime index more closely approximating to the general crime rate of the whole population than that of any other age group. Nevertheless, exact comparisons between the war-time fluctuations in crime and those in population caused by an augmented fighting force would be possible only if the age composition of the latter were more exactly known. It is somewhat amusing and characteristic of the



bias to be found in certain investigators to read in a German study on the Franco-German War of 1870-1 that the writer, after proudly ascribing the alleged decline in crime during that war to the patriotic enthusiasm of the people, adds—rather by way of afterthought—that the increase in the German Army from 340,000 to 1,200,000 men may have contributed somewhat towards the decrease, as there may have been a few black sheep among the new soldiers.

This is one of the reasons why female and juvenile delinquency usually occupy favourite places in any discussion on war-time crime—their figures are less affected by external changes. Even here, however, certain difficulties may arise through the shifting of the civilian population from certain danger spots to safety zones. This happened in the last war—especially in France and Austria<sup>1</sup>—by the removal of inhabitants of mainly rural frontier districts to more centrally situated big towns. During the present war the migration of refugees has taken on truly gigantic proportions, particularly in France, Belgium, and Finland, if only for a short period. In this country the movement is assuming the form of evacuating considerable sections of townspeople into the country or from big cities into smaller towns.

To quote a striking instance of the difficulties with which the future investigator will probably be confronted, the population changes in a town “somewhere in England” with 25,000 pre-war

<sup>1</sup> See, for instance, Franz Exner, *Krieg und Kriminalität in Österreich* (1927), pp. 5 *et seq.*

inhabitants are described in *The Times*<sup>1</sup> as follows :—

On national registration day at the end of September the population had increased to 30,000. That increase included evacuated children, voluntary evacuees, and munition workers, but did not include troops billeted in the town. Since then additional accommodation has been reserved in the town for 750 troops, 1,000 Civil servants, and 4,250 munition workers. . . . In the meantime about sixty per cent. of the evacuated children have been withdrawn by their parents.

The town, it is stated, had to provide billets for pregnant mothers, foundry hands, clerical workers, children of the elementary schools elevated by scholarship to the central (or county) school, troops of the expanding Army, school teachers and voluntary caretakers of the newly weaned infants, doctors and nurses for newly created military and semi-military hospital units, and a stratum of officials for controlling food, fuel, commodities.

Although such local changes may not affect the total volume of the population, they make it difficult, or even impossible, to compare pre-war, war, and post-war figures for one and the same locality. And, finally, after a war the population of a country does not simply return unchanged to its pre-war composition; through the death of

<sup>1</sup> December 29, 1939.

many young and middle-aged men it may assume a different structure altogether. A large-scale transfer of children overseas such as is being carried out in this country at the time of writing influences even the size of the child population as a whole.

On the other hand war-time criminal statistics, thus confronted with particularly heavy tasks, instead of evolving more elaborate and subtle methods of collecting and correlating their material, are, under the pressure of war economy, obliged to limit their activities to the barest minimum. Nor is this true only of the purely theoretical aspects of the matter. No less profoundly affected by war is the practical work of the police forces, which, deprived of a great many of their members, may have to adopt methods of crime prevention and detection different from their peace-time methods. And if, in addition, the customary changes in the criminal law and the law of criminal procedure should be made in the course of a war or soon after its conclusion, it becomes plain that criminal statistics must be interpreted with the utmost caution.

Apart from such statistical handicaps, there arises the terminological question as to how far we are entitled to regard certain crimes committed during a war as actually due to the war. In other words what exactly have we in mind when we speak of war as the cause of a given crime? Do we refer to *any* criminologically significant action which arises out of a war, or only to such effects as owe their existence exclusively to the special conditions produced by a war—in other

words, to effects which are truly characteristic of it and could not have come into being through any other agency? Take the black-out, for instance. Although at present it is actually a consequence of the war, the same condition might well be caused temporarily by other factors, such as a strike or coal shortage. And on many other crime-producing conditions such considerations may have a still stronger bearing. Nevertheless, we are perfectly right in extending the scope of our investigation widely enough to include consequences which, though they might have been brought about by other means as well, are actually due to the war.

In another respect, too, we should not take too narrow a view by ascribing to the war only such effects as show themselves during the war or at least immediately afterwards. Human beings do not act like automatic machines which are supposed to deliver their goods immediately the penny is put in the slot. When the crime rate among middle-aged and elderly men rose in France after the year 1851, this was said to have been due to their having been born during the Napoleonic Wars, or during the Revolution, and thereby having become imbued, from early childhood, with the spirit of rebellion and pugnacity.<sup>1</sup> Though this may seem somewhat too far-fetched, it is hardly an exaggeration to say that the criminological aftermath of the last World War had not yet exhausted itself when the present war broke

<sup>1</sup> Alexander von Oettingen, *Moralstatistik* (third ed., 1882), p. 515.

out. On Armistice Day, 1938, in Manchester, a man aged 43 slashed the face of a girl with a razor blade during the two minutes' silence. The girl, a shorthand typist, was a complete stranger to him and there had been no quarrel whatsoever. The man was a convict on licence and he said in the Court that he could not explain his action, but he believed that during the silence his mind must have been taken back to his war years in France.<sup>1</sup> And this is only a particularly extreme instance of the havoc which, in individual cases, a war may work in the human mind. Take the pathetic case of the doctor, aged 41, in a small English town who, on the day before the outbreak of the present war, gassed his wife, at the same time unsuccessfully attempting to gas himself. As a boy of 19 he had served in France during the last War, "experiencing the sight of wholesale slaughter. On one occasion he had passed into a state of fugue in which he left an ambulance." These war experiences made him tremble with horror at the thought that there was to be another war and that his beloved wife might become a victim of air bombardment. He was found guilty but insane as a case of "dissociated personality."<sup>2</sup>

But even supposing we had at our disposal reliable and comprehensive criminal statistics for the military as well as for the civilian population, and the necessary vision to take a wide view of the

<sup>1</sup> *The Times*, December 13, 1938.

<sup>2</sup> The case is fully reported in the *Lancet*, Vol. 237, November 25, 1939, pp. 1123 and 1137. See also *The Times*, November 20, 1939.

problem, there would still remain a snag that can probably be removed neither by figures nor by vision. When dealing with crime we are dealing with a legal—i.e., an artificial—conception which of necessity becomes partly transformed by the outbreak of a war. Like butter or snow in the sun, certain types of ordinary crime, if committed under certain conditions, simply melt away and lose their significance, while new types may make their appearance. After the coming of peace all this is again reversed and the melted butter or snow reappears—as far as it still exists. The human mind, however, may find it hard to appreciate all these transformations, and here and there something may suffer which is called belief in justice, or the knowledge of how to distinguish between right and wrong.

A short time before the outbreak of the present war, a distinguished medical psychologist<sup>1</sup> published the striking story of a middle-aged man who had repeatedly got into trouble for embezzling. This man, at the time hardly more than a boy, had taken part in the war of 1914–18 in a distant theatre where the official news of the Armistice reached him only three months after the event, unfortunately too late to prevent him from committing certain actions which, perfectly legal as acts of warfare, now—suddenly deprived of their war-time justification—retrospectively assumed the

<sup>1</sup> Dr. David Forsyth, "The Case of a Middle-Aged Embezzler," communicated to a Medical Staff Meeting of the Institute for the Scientific Treatment of Delinquency and published in the *British Journal of Medical Psychology*, Vol. XVIII, Part 2 (1939), pp. 141 *et seq.*

character of murder, robbery, and other serious crimes. To make matters still worse, recalling that he had in fact been told unofficially of the conclusion of the Armistice but had not believed in its truth, "he began to feel he was no better than a murderer," and this feeling, in conjunction with some other disturbing experiences, led to a mental breakdown and to the development of criminal and generally anti-social tendencies which it was possible to cure only twenty years later through hypnosis and other medico-psychological treatment.

This, then, is the snag—the fact that the same kind of otherwise criminal actions, such as killing, burning, and so forth, go on in war-time just as in peace-time, but may now fall into entirely different categories. And it is this snag that may conceal from our view certain essential aspects.

It would be dangerous, however, to go on discussing in such a generalizing manner the effects of war *in abstracto* upon crime. Although there certainly exist many factors common to all types of war and of crime, it is most essential that the differences should be borne in mind. We may, indeed, expect that each type of war will have its particular criminological implications. To indicate only some aspects of the matter: the *Blitzkrieg* may in this respect differ from a war lasting four, or thirty, or a hundred years; a totalitarian war from a civilized one; a popular war from an unpopular one;<sup>1</sup> a war that is the

<sup>1</sup> See Pitirim Sorokin, *Contemporary Sociological Theories* (1928), pp. 341 *et seq.*

long-expected climax of a period of nerve-racking international crises from one which breaks out suddenly. War, again, may have different consequences for the nation within whose territory it is fought than for the invader, for the victorious Power than for the vanquished. Moreover, it might be expected that effects upon crimes of violence may differ from those upon economic crimes, and that the various elements of a nation may react in rather different ways—combatants otherwise than non-combatants, women and children otherwise than men. A country which enters the war with a large conscript army will find itself in a different position from another that has to build up its armed forces on a voluntary basis; and so forth.

And, lastly, would it not be only natural that in a war extending over a considerable period different stages might become discernible, each of them bearing special criminological characteristics? What form might one expect such developments to assume? In the initial stages the keynote will be the bending of the whole energies of the nation against the external enemy, solidarity of effort, and an elation of spirits and goodwill. Asocial and anti-social elements are still too stunned to adapt themselves to the changed conditions and spend their time in wondering what to do rather than actually doing anything. As a consequence all the crimes of petty egotism, particularly offences against property, will tend to disappear under the pressure of universal condemnation. On the other hand one may expect types of mis-



behaviour more in accordance with the high spirits of the time, such as drunkenness offences—with their inevitable concomitants, minor acts of violence—to become more prevalent.

Such a state of affairs can obviously last for but a few months. Once a community has settled down to the war, its normal criminal impulses can no longer be suppressed; they will now be obliged, however, to accommodate themselves to the vicissitudes of the war. The growing economic problems; changes in earnings and cost of living (disproportionately affecting various social classes, producing overwork for some and lack of employment for others); scarcity of food; disruption of family life, and a host of other factors are bound to make their impress upon the criminological picture of the country. Economic crime rises again, and juvenile delinquency becomes startlingly acute. The final stage depends entirely upon the outcome of the struggle. While in the victorious countries the crime-wave may be stommed, in the vanquished country it may assume overwhelming proportions.

The picture presented by more than one of the countries involved in the wars of the last hundred years seems to have corresponded fairly closely to this conventional conception, though exceptions have not been altogether lacking.

II. The war-time criminality of the fighting armies requires some special consideration. For obvious reasons, it is here particularly difficult to obtain reliable evidence. There are, of course, to be found a number of more or less interesting

speculations on the sources and characteristics of the soldier's criminality and the changes it has undergone in accordance with the changes in the character of warfare itself. It has frequently been accepted as a dogma requiring no further proof that the soldier, everywhere, shows the highest crime rate of all sections of the population,<sup>1</sup> and various *a priori* reasons have been adduced in support of this contention.<sup>2</sup> Here we find a reference to former methods of recruiting for the Army which led to infiltration with rogues, vagabonds, and even more dangerous types of criminals. As it proved impossible to secure the necessary numbers of recruits from the non-criminal classes, recourse was had to the lowest strata of society.

In eighteenth-century regulations for German prisons provision used to be made for the handing over of inmates to the military authorities even before they had served the full sentence, and we sometimes find it specially recorded in the prison archives that only the undersized stature of a prisoner or his nonconformist creed had prevented him from being pressed into the Army. On the other hand, a Defoe asks his Queen to allow him to serve in the Army instead of going to prison: "I will surrender myself a volunteer at the head of her armies in the Netherlands . . . and without doubt, I shall die there much more to her service than in a

<sup>1</sup> See A. von Oettingen, *Moralstatistik* (third ed., 1882), p. 502.

<sup>2</sup> S. R. Steinmetz, *Soziologie des Krieges* (1927), pp. 112 *et seq.*

prison. . . .”<sup>1</sup> Professor G. M. Trevelyan,<sup>2</sup> though regarding Wellington’s famous reference to his soldiers as to “the scum of the earth” as evidence of “the common limitations of upper-class sympathy at that period,” cautions us not to forget the remainder of that drastic characterization: “It really is wonderful that we should have made them the fine fellows they are.”

The professional soldier, the hireling who sold his services to those who paid best, could, it was argued, hardly be expected to conduct his wars with much respect for life and property of private persons. On the other hand he was too powerful and too valuable to be executed even for the most serious crimes. “It was ordered accordingly,” reports Pike,<sup>3</sup> “that soldiers and sailors were not to be executed until the King’s pleasure should be known. It is unnecessary to explain the effect of such impunity upon the morals of the Army and Navy and upon the general security of life and property.”

With the coming of the modern Army—the Army of the Nation—a fundamental change was believed to have taken place. As soon as the idea became fairly common that service in the fighting forces was not something just good enough for the ne’er-do-well who was either too wicked or too restless for decent and peaceful occupations, but a privilege to be proud of, the soil was prepared for the evolution of a special written or unwritten

<sup>1</sup> James Sutherland, *Defoe*, p. 90.

<sup>2</sup> *History of England* (seventh impression, 1929), p. 583.

<sup>3</sup> Pike, *History of Crime in England*, Vol. II, pp. 372-3.

Code of Honour which effectively prevented many of the previous outrages. The "lessening brutality of modern warfare," largely due to the greater distance between the fighting armies and the absence of personal hatred between the individual adversaries, is often mentioned as a sign of progress. Nor are the improved methods of provisioning a modern Army forgotten as relieving the troops from the necessity of maintaining themselves by means of plunder.<sup>1</sup>

On the other hand, with the growth of Pacifist ideology at the end of the nineteenth century it was only natural that furious attacks upon the soldier's mentality should again become frequent, supported by masses of scientific and pseudo-scientific material. Fifty years ago Gabriel Tarde, himself not an anti-militarist, recorded for the French Army an average of 107 offences per 10,000 men, as against an average of forty per 10,000 male civilians.<sup>2</sup> He seems to have overlooked the fact that the age groups which form an average conscript army are always those with a particularly high crime rate. It was the age factor, not the profession, that was responsible for that difference between the army and the civilian population. Another well-known French scholar of that period, Professor Augustin Hamon, devoted a special book,<sup>3</sup> crammed with a hotch-potch of evidence, to the thesis that militarism constitutes *une*

<sup>1</sup> Comforting theories of this kind have been brought forward especially by Steinmetz, *op. cit.*, p. 154.

<sup>2</sup> *Penal Philosophy*, p. 420, fn. 2.

<sup>3</sup> A. F. Hamon, *Études de psychologie sociale. Psychologie du militaire professionnel* (1894).

*véritable école du crime.* But, even apart from such outspokenly anti-militarist writings, the theory of constant progress towards greater humanity in the conduct of war, rudely shaken already by the experiences of 1914-18, has been strongly opposed by recent historians. Guglielmo Ferrero <sup>1</sup> and Professor Arnold Toynbee <sup>2</sup> have pointed out that, after the wars of religion had led to terrible outbreaks of violence and hatred, the eighteenth century created comparatively humane methods to which subsequent history offers hardly any parallel. As a consequence of the view that every belligerent should regard the cause of his adversary as potentially no less just than his own,<sup>3</sup> war failed to arouse violent passions and became "the sport of kings." Armies no longer lived off the country, commanders respected the rules of warfare and the rights and property of the civil population.

This paradisaic stage was, however, of only short duration. After the coming of industrialization and mass democracy, modern warfare has reached its present climax of unrestricted cruelty. The potential effects of this change upon the soldier's mind and behaviour are too obvious to require any detailed discussion. One aspect of the matter that has of late become particularly revolting is the growing use of violence against the civil population. The totalitarian soldier, accustomed to disregard the simplest commands of humanity

<sup>1</sup> *Peace and War* (1933), pp. 4 *et seq.*

<sup>2</sup> *A Study of History*, Vol. IV, pp. 143 *et seq.*; Vol. VI, p. 319.

<sup>3</sup> See below, p. 149.

in his own country, cannot be expected to change his conduct abroad. True as it may be that the greater distance which modern weapons have placed between the opposing forces has in so far lessened the spirit of personal violence, this advantage has become completely lost where an invading army finds itself in close contact with a civil population which it is supposed to keep in obedience by force.<sup>1</sup> The criminological consequences which this type of warfare must eventually produce in the souls and behaviour of the individual soldier who is wantonly exposed to temptations of so terrific dimensions cannot as yet be fully assessed.

For the war of 1914-18 the most comprehensive material on the criminality of the soldier was published by some Austrian writers.<sup>2</sup> After the collapse of the Habsburg Empire the successor States consented to leave the Viennese central archives of the Military Courts untouched for purposes of research, and full use was made of this opportunity. Though the results can hardly be called revolutionary, some preconceived opinions must be revised. No evidence could be found, for instance, for the belief that the soldier with previous

<sup>1</sup> Dr. E. Glover, *The Psychology of Fear and Courage* (Penguin Special, 1940), p. 85, draws attention to the fact that "both hate and pity depend on being aware of the individual hated or pitied. . . . And so we find ourselves faced with an almost diabolic state of affairs that ruthlessness increases in direct ratio to the distance from the enemy."

<sup>2</sup> E. Junk, *Das Verbrechen im Kriege* (1920); G. Lelewer in F. Exner, *Krieg und Kriminalität in Österreich* (1927). The following text is largely based on the material collected by these authors.

convictions, or even the professional criminal who turned soldier, behaved worse in any way than the man with a clean sheet. On the contrary, while his share in decorations for bravery exceeded the average, his crime rate was even lower as long as he found himself in the battle front. It was only when coming home on leave or staying in some quiet spot behind the lines that he frequently relapsed. Such differences were not restricted, however, to those who had already in civil life come into contact with the criminal courts. In general there developed a contrast in behaviour between the front-line soldier and his comrade in the hinterland. The former had to be called to account mainly for petty pilfering committed on farms and villages evacuated by the civilian population. Here it proved a well-nigh insoluble problem for the military courts to make even men of otherwise superior moral standards understand that property left behind by the owners could not be taken simply for the reason that otherwise somebody else would probably appropriate it. On the other hand crimes of violence, especially murder, were rare—a fact sometimes related to the absence of alcohol and women in the actual front line. Returning to the hinterland, however, the soldier fell an easy prey to the many temptations of “civilized life” which he now, after long privations, came to enjoy more intensely than ever. Proud of his own value as the defender of the fatherland, his head swollen with the admiration paid to him by relatives and women, bitter against shirkers who knew how to enrich themselves in war-time, he got into the habit

of making short work of the rights of the civilian population at home.

Of special interest are certain changes in the conception of cowardice which the Austrian Military Courts felt obliged to introduce in the course of the war. Greater leniency was recommended for two reasons : first, the gradual realization that cowardice, like courage, may be an inborn quality which the individual can, by his own exertions, overcome only up to a certain limit;<sup>1</sup> and, second, the fact that in that war, and for the first time after a period of safety, even commanders of higher rank and judges of Courts-martial had to face personal danger from air attacks. This new experience, we are informed, made them somewhat more sympathetic in their dealings with subordinates charged with unsoldierlike behaviour.

III. Before turning to recent war experiences it may be of interest to examine in brief the criminological results of some previous armed conflicts for which certain statistical data are available.

(a) As far as Great Britain was concerned, the Boer War was on too small a scale to effect substantial changes in the crime situation. A perusal of the contemporary volumes of the criminal statistics proves that very little attention was paid to the war. The returns of crime known to the police show, for 1899, a decline of over seven per cent. against the previous year, and the figures were the lowest since 1857. The considerable decline in offences that became noticeable at the

<sup>1</sup> On the civilian's "Psychology of Fear and Courage," see now Dr. E. Glover's Penguin book.



end of the year was traced back to the calling out of the reserves in December and to the consequent absence of 600 policemen. It was also stated that the calling out had given occupation to many who would otherwise have been driven into crime.<sup>1</sup> From 1900 onwards, however, there was a steady worsening of the position up to the year 1908, which constituted the peak year of crime before the war of 1914–18. Indictable offences known to the police numbered per 100,000 of the population:—<sup>2</sup>

1857 . . . .	476
1899 . . . .	239
1908 . . . .	298

It is interesting to note that this sudden turning of the tide was, in official publications, in no way attributed to the war. Rather was the increase described as a casual fluctuation or as a consequence of the passing of the Summary Jurisdiction Act of 1899, and it must indeed be admitted that this change in legislation made it almost impossible to assess the actual share of the war. Only for those classes of offences which had remained untouched by the Act of 1899 can more definite conclusions be drawn. The number of boys between 16 and 21 convicted of sleeping out and begging went up from 742 in 1900 to 1,016 in 1902 and to 1,390 in 1904—increases which could without difficulty be explained by the return of the soldiers from South Africa.<sup>3</sup>

<sup>1</sup> Introduction to *Criminal Statistics for 1899*, p. 11.

<sup>2</sup> *Criminal Statistics for 1925*, pp. 1 *et seq.*

<sup>3</sup> See Charles E. B. Russell and L. M. Rigby, *The Making of the Criminal* (1906), pp. 61 *et seq.*

(b) On the "Relationship between War and Crime in the United States" some material has recently been compiled for the three big wars in American history.<sup>1</sup> Though the data available are not particularly copious, they suffice to show that, beginning with an epidemic of horse-stealing during the War of Independence, all the common features of war-time criminality were well represented. The Civil War saw a hundred per cent. decrease in prison inmates, "not because there was less crime but because there were less convictions." This was followed by an unprecedented influx immediately after the coming of peace, a phenomenon that repeated itself during and after the war of 1914-18. Particularly disturbing was the number of ex-service-men who found themselves in penal institutions after the conclusion of the war; it was estimated at about 20,000 for the whole country over the three years' period following the armistice. In spite of the absence of certain factors making for juvenile delinquency (as only men up to thirty were drafted into the Army, the number of fathers absent from home must have been smaller; and school life was less disturbed than in this country owing to the preponderance of women teachers), the effect of the war upon the young was hardly less harmful.<sup>2</sup>

(c) The Franco-German War of 1870-1 was probably the first modern war of considerable dimensions for which at least a certain amount of reliable

<sup>1</sup> Betty B. Rosenbaum, *Journal of Criminal Law and Criminology*, Vol. XXX, Jan.-Feb., 1940.

<sup>2</sup> See also Clarence S. Darrow, *Crime: Its Cause and Treatment* (1922), Chapter XXIX.

information is available. It was, at the same time, a type of war which presented a very marked contrast between a victorious and a beaten nation, between an invading and an invaded country. We might therefore expect uninvaded victorious Germany to have emerged from that war with a much cleaner criminological sheet than France. In fact statistical investigations carried out by both German and French scholars at the end of the last century have led to the conclusion that the opposite is true. In spite of all the fateful events in French history which might well have been regarded as liable to cause a crime wave of the first order, French post-war figures are stated to have been more favourable than the corresponding German ones.<sup>1</sup>

There are certain features common to both countries—high crime rates before the war, a sudden drop in 1870 and, in certain respects, still more in 1871, followed by a rise, culminating in the years 1877–8, which assumed even greater dimensions in Germany than in France. Naturally many attempts have been made to explain this startling phenomenon. While the drop in the war-time figures themselves was usually attributed to patriotic enthusiasm, the later developments have been interpreted in the light of the different economic fates of both countries. France, in

<sup>1</sup> For the following text see W. Starke, *Verbrechen und Verbrecher in Preussen, 1854–78* (1884); R. S. Steinmetz, *Soziologie des Krieges* (1927), pp. 160 *et seq.*; Albert Bournet, *De la criminalité en France et en Italie* (1884); Paul Lafargue, *Neue Zeit*, 8 Vol., 1890; A. von Oettingen, *Moralstatistik* (third ed., 1882), pp. 474 *et seq.*

spite of the indemnity of five milliard marks and the loss of Alsace-Lorraine with its prosperous industry, made a surprisingly quick and complete recovery, while Germany, wallowing in an abundance of money and wealth, was heading for one of the most serious economic crises in her history.

Certain other factors have, it is true, occasionally been made responsible for the increased crime figures—first, and quite justly, the introduction of a new Penal Code in Germany immediately after the war, followed by another legal change in 1876; and second, with more inner conviction than justification, the simultaneous growth of the Socialist Movement. Curiously enough, none of our authorities regards it as necessary to disclose whether, as far as the French figures are concerned, an essential point had been duly considered in these statistical comparisons—the loss of a few million inhabitants through the cession of Alsace-Lorraine. If they have not taken this into account it is obvious that this omission would explain the surprisingly favourable French figures and invalidate most of the conclusions reported above. Thus the plain prose of facts may sometimes disperse and refute the speculations of the scientist!

## CHAPTER IV

### THE WORLD WAR 1914-18

I. It is only natural that during and after the war of 1914-18 the public at large as well as scientists should have become more enlightened as to the criminological implications involved in the question of war. The longer duration and much wider scope of the conflict, as compared with that of 1870-71, as well as the higher standard which criminological methods had in the meantime reached, made thorough investigations more urgent and at the same time more promising. That the output, with a few exceptions, did not quite come up to our expectations may have been due largely to the fact that the difficulties inseparably connected with research into war-time conditions and problems<sup>1</sup> proved too great. For only two of the countries involved in the war—Germany and Austria—was it made possible, through the initiative and financial support of the Carnegie Foundation, to survey the whole field within the framework of *The Economic and Social History of the World War*.<sup>2</sup> The Central Powers were

<sup>1</sup> Above, p. 65-6.

<sup>2</sup> See Franz Exner, *Krieg und Kriminalität in Österreich* (1927); M. Liepmann, *Krieg und Kriminalität in Deutschland* (1930).

probably chosen as countries where the ill effects of the war were chiefly felt and where all phases of the phenomenon would be still most conspicuous.

No investigation of similar completeness has as yet been published for Great Britain. In the British Series of *The Economic and Social History of the World War* there is no special criminological section, and even in Mr. F. W. Hirst's illuminating volume on *The Consequences of the War to Great Britain* (1934) the problem of crime was only slightly touched upon. The explanation may lie in Mr. Hirst's warning—uttered with reference to research on the "Social and Moral Consequences" of the war in general—"I am well aware that here we shall be moving in a region of uncertainty where only doubtful conclusions can be reached. . . . It was not, I felt, a question of research, but of opinion."<sup>1</sup> But this is a verdict which may perhaps go a little too far.

Mr. Cecil Leeson's admirable little book on *The Child and the War* seems to have been the first successful attempt to draw the attention of a wider public to a particularly important part of the problem. Written in 1916, it could, however, cover no more than the first half of the war, and it was still too near the events. Mr. Leeson was followed by the Board of Education's (Juvenile Organizations Committee) *Report on Juvenile Delinquency* (1920), based upon an analysis of 7,000 Juvenile Court Records for 1917-19. No special investigation, however, was made into the

<sup>1</sup> *Op. cit.*, pp. 63 *et seq.*

development of adult delinquency during the war.<sup>1</sup> As a consequence, as far as Great Britain is concerned, the present study had to be based mainly upon the criminal statistics, the Reports of the Prison Commissioners, and the contemporary volumes of the Press, particularly *The Times*.<sup>2</sup> The historical value of the court reports and similar items contained in the serious daily and weekly papers is almost inestimable.

Even for purely theoretical research the war of 1914-18 proved a disaster in so far as it destroyed an almost unique chance—the opportunity of observing under fairly constant conditions the effects on crime of those fundamental Reform Acts in the fields of penal as well as social legislation that had been passed in this country just before 1914. Nevertheless, here, as in other branches of research, the war was not entirely without positive items to its account, since it opened up unprecedented possibilities of probing into the criminological reactions of human beings when experiencing a complete revolution of their social, economic, and moral standards. The upheaval was not so far-reaching in Britain as it was in some other belligerent countries, and it is illuminating to see that the reactions were also consequently much less violent. Nobody, however, will deny that they existed.

<sup>1</sup> Miss Mildred Emily Bulkley—*Bibliographical Survey of Contemporary Sources for the Economic and Social History of the War* (1922)—quotes less than half a dozen short articles, some of which are only very indirectly concerned with crime.

<sup>2</sup> In addition, Miss C. E. Playne's books, especially *Society at War* (1931), covering the first years of the war, and *Britain Holds On, 1917-18* (1933), contain some valuable information.

The official Criminal Statistics for England and Wales during the war show two tendencies, both of which have already been widely discussed—an apparent decrease in adult delinquency and an increase in juvenile delinquency. Before giving any particulars for each group separately, it may be useful to show the development of crime and delinquency in general during that period (Tables I and II, pp. 92, 93).

As can be seen from these tables, the development in the amount of crime and delinquency during the war years was by no means so consistent as is often believed. On the whole, three groups may be distinguished :—

(1) Offences which show a slow but steady decrease, as, for example, the majority of Class I (Crimes against the Person). Even within this group there are, however, considerable differences in the extent of this decrease. The percentages are much higher for wounding and assault than for murder or manslaughter. Decrease is also shown in embezzlement, arson, or other malicious injuries, forgery and coining, habitual drunkenness, attempted suicide, and in the following non-indictable offences: assault, drunkenness, obstructions and nuisances, offences against Police Regulations, Poor Law offences, prostitution, begging, and sleeping out.

(2) Offences which diminished during the first years of the war but again reached, or even considerably surpassed, their pre-war standard towards the end: shopbreaking, larceny by a servant, other types of larcenies, gaming.



TABLE I.  
*Indictable Offences Reported to the Police.*

	1913.	1914.	1915.	1916.	1917.	1918.
<i>Grand Total</i> . . .	97,933	89,387	77,972	80,653	88,864	87,762
<i>Total of Class I.</i> (Crimes against the Person) . . .	4,710	4,218	3,450	3,202	2,733	2,950
In particular :						
Murder . . .	111	92	81	85	81	81
Manslaughter . . .	154	128	145	111	99	73
Felonious Wound- ing . . .	240	195	129	109	88	86
Malicious Wound- ing . . .	932	847	626	451	284	313
Indecent Assault on Females . . .	1,385	1,320	1,028	920	663	723
<i>Total of Class II.</i> (Crimes against Property with violence) . . .	12,291	10,850	7,384	8,567	10,388	11,224
In particular :						
Burglary . . .	1,501	1,196	699	739	774	787
Housebreaking . . .	5,195	4,447	3,058	3,141	3,552	3,662
Shopbreaking . . .	4,260	4,055	2,884	3,825	5,007	5,769
<i>Total of Class III.</i> (Crimes against Property with- out violence) . . .	76,523	70,124	63,941	66,874	73,881	71,979
In particular :						
Larceny from Person . . .	2,485	2,271	1,804	1,903	2,314	2,216
Larceny by a Servant . . .	4,647	4,135	4,246	5,407	6,721	6,603
Simple and Minor Larcenies . . .	59,542	54,540	49,492	51,362	55,705	54,450
Embezzlement . . .	2,034	1,658	1,253	1,124	1,203	708
Receiving . . .	1,746	1,608	1,831	2,113	2,644	2,599
False Pretences . . .	4,230	4,277	3,035	3,695	3,857	3,852
<i>Total of Class IV.</i> (Malicious Injuries to Property) . . .	638	594	410	187	229	166
In particular :						
Arson . . .	342	299	188	120	142	105
Other Malicious Injuries . . .	237	238	180	38	30	33
<i>Total of Class V.</i> (Forgeries and Coining) . . .	655	570	429	340	417	390
<i>Total of Class VI.</i> (Other Offences not included in the above Classes) . . .	3,116	3,031	2,358	1,483	1,216	1,053
In particular :						
Habitual Drunk- enness . . .	332	217	63	73	27	16
Attempted Sui- cide . . .	2,478	2,491	1,693	1,254	964	845

TABLE II.

*Non-Indictable Offences (Persons for Trial).*

	1913.	1914.	1915.	1916.	1917.	1918.
<i>Grand Total</i> . .	680,290	626,765	532,444	610,218	445,758	375,105
In particular :						
Assaults on Constables . .	8,781	8,559	5,348	3,765	2,373	1,824
Common Assaults . .	33,623	32,424	26,566	24,631	19,639	20,117
Betting and Gaming . .	5,247	3,616	1,754	1,515	1,638	2,157
Brothel Keeping . .	1,025	710	788	772	1,051	768
Highway Acts :						
Offences by Owners and Drivers of Carts . .	14,885	12,002	11,762	23,601	15,336	10,326
Obstructions and Nuisances . .	23,023	19,502	13,982	12,663	11,994	10,654
Motor-Cars . .	25,701	26,068	24,706	30,730	19,566	11,103
Bicycles . .	11,298	10,006	9,440	19,015	15,630	15,985
Indecent Exposure . .	1,938	1,875	1,333	1,163	858	662
Drunkenness :						
Simple . .	62,835	64,225	58,065	39,870	25,208	17,665
Aggravated . .	141,203	138,939	92,258	50,199	24,722	13,454
Offences against Naval, Military and Air Force Law . .	602	991	2,153	11,149	6,584	5,747
Police Regulations :						
Metropolitan Police Acts . .	19,849	17,441	11,369	10,930	8,174	7,060
Town Police and other Police Acts . .	26,041	22,272	13,585	11,529	8,494	6,331
Borough Byelaws . .	15,742	13,941	8,108	7,463	5,065	4,051
County Byelaws . .	20,358	18,490	12,587	10,442	7,189	5,882
Local Acts and Byelaws . .	24,519	21,312	12,696	12,447	9,887	8,894
Poor Law Offences :						
Neglecting to Maintain Family . .	2,927	2,639	1,507	1,134	903	775
Misbehaviour by Paupers . .	2,533	1,817	725	436	376	181
Prostitution . .	10,629	9,808	6,915	5,521	5,655	5,288
Stealing Fruit, Plants, etc. . .	2,985	3,055	2,858	3,321	5,758	5,034
Begging . .	20,392	15,001	5,878	3,404	2,391	1,687
Sleeping Out . .	7,131	6,610	2,719	1,855	1,226	964
Gaming, etc. . .	29,384	23,354	16,574	21,934	21,113	25,409

(3) Offences which increased steadily: bigamy, receiving stolen goods, stealing fruit, plants, etc., and, of course, offences against the Naval, Military and Air Force Laws.

The picture changes somewhat when we separate the figures for juveniles from those for adults:—

TABLE III.

(At Assizes and Quarter Sessions, and Summarily.)

	1913.	1914.	1915.	1916.	1917.	1918.	1919.
<i>A. Number of Persons tried for Indictable Offences.</i>							
I. Adults and Juveniles together .	63,269	58,559	55,535	58,817	63,005	58,371	53,541
II. Juveniles <sup>1</sup> .	14,825	14,845	20,418	23,753	24,407	21,061	13,999
III. Adults	48,944	43,714	35,117	34,864	38,598	37,310	39,542
<i>B. Number of Persons tried for Non-Indictable Offences.</i>							
I. Adults and Juveniles together .	680,290	626,265	532,444	610,218 <sup>2</sup>	445,758	375,105	493,047
II. Juveniles .	23,195	22,084	23,563	24,589	26,916	28,854	26,474
III. Adults	657,095	604,681	508,881	585,629	418,842	346,251	466,573

<sup>1</sup> The term "juveniles" includes persons aged above 16 years who were dealt with in Juvenile Courts, but not children and young persons who were brought before ordinary Courts of Summary Jurisdiction. It therefore refers to the competence of the Juvenile Courts rather than to age, as far as Courts of Summary Jurisdiction are concerned.

<sup>2</sup> This sudden increase is mainly connected with the increase in the group "Other Offences," which numbered:

1914	.	.	6,194	1917	.	.	67,120
1915	.	.	43,646	1918	.	.	60,434
1916	.	.	139,104	1919	.	.	19,008

The criminal statistics contain no further indication as to the nature of these "Other Offences" (which, by the way, were almost exclusively dealt with by fines).

While there is a continuous rise in the figures for indictable offences committed by juveniles

up to 1917 inclusive, followed by a decline in 1918 and a return to pre-war figures in 1919, the decrease in adult crime up to 1916 inclusive becomes a little more, and the rise in 1917 a little less, marked. The figures for non-indictable offences, however, are hardly affected by juvenile delinquency.

In the Criminal Statistics for 1917 the following interesting figures for offences against the Emergency Legislation are given :—

TABLE IIIa.

Statute.	Persons Proceeded against in			
	1914.	1915.	1916.	1917.
Defence of the Realm Act . . .	83	33,071	121,563	50,506
Aliens Restriction Act . . .	3,226	7,551	14,279	13,006
National Registration Act . .	—	50	879	1,192
Trading with the Enemy Acts.	3	37	27	16
Total . . . . .	3,312	40,743	136,841	65,386

As the editor points out, "it has not been possible to make a complete table of all such cases, because some of the offences have been returned under specific headings without distinguishing them from similar offences under the ordinary law; for instance, all offences in relation to lights on vehicles . . . are returned under the heading, 'Highways Acts, Offences against. . . .'" The huge drop in 1917 is more difficult to explain than the rise in 1916; perhaps it may indicate that the population had quickly adapted itself to D.O.R.A. and its complexities.

The conspicuous fall in the less serious types of

offences against the person—as shown in Table I—is probably due to at least four causes: decreasing eagerness of the population to prosecute; preoccupation of the police with other tasks; enlistment of many “fighters”; falling consumption of alcohol. It is not without interest that even a neutral country like Holland experienced an analogous decline in this type of offences (from 3,758 in 1913 to 1,801 in 1918). In that country the growing preoccupation of the authorities with other problems—as, for instance, the prosecution of the increasing number of larcenies (from 333 per million in 1914 to 840 in 1918 and 1,032 in 1919)—was regarded as the chief cause of that decline. “We cannot be so naïve as to believe that the Dutch people became so much gentler within the few years of the War,” we read in an article by two Dutch criminologists.<sup>1</sup>

Of the other changes very few seem to require any explanation, as most of them speak for themselves. That begging and other symptoms of pauperism should have decreased at a time when unemployment—except for the first few months—became almost unknown<sup>2</sup> is self-evident. In rural districts, arson disappears together with

<sup>1</sup> de Roos and Suermondt, *Die Kriminalität in den Niederlanden während und nach dem Kriege*, *Monatsschrift für Kriminalpsychologie und Strafrechtsreform*, Vol. 14 (1923), pp. 113 et seq.

<sup>2</sup> Sir William Beveridge (*Unemployment*, 1930 edition, Longmans, Green, & Co., p. 433) quotes the following (Trade Union) percentages of employed workers:

1914	.	96.75	1917	.	99.40
1915	.	99	1918	.	99.30
1916	.	99.55	1919	.	97.50

vagrancy, and suicide becomes unattractive when there are so many more heroic possibilities for those men who are tired of life. The doubling of the number of persons for trial for stealing fruit and plants illustrates the growing scarcity of food.

The decline in police activities brought about by the fact that about ten per cent. of the Forces had joined the colours <sup>1</sup> largely explains the huge fall in offences against Police Regulations which are usually the first to be neglected when the police have their hands full with more urgent matters. Assaults on constables diminish, too, when there are fewer constables. On the other hand, the loss of so many trained policemen may have been somewhat repaired by the establishment of the Special Constabulary.

Last, but not least, the statistical decrease in crime must, of course, be attributed to the fact that four or five million men of those age groups particularly prone to come into conflict with the law had entered the fighting services.<sup>2</sup> As the total male population of England and Wales between twenty and fifty years of age, according to the Census of 1911, numbered about seven and a half million, the apparent decline in indictable crimes represents in fact a considerable increase.

<sup>1</sup> See, e.g., *Report of the Metropolitan Police*, 1916, pp. 4-5 : Authorized strength of the Force, 22,355; serving with the Army and Navy, 1,858. The latter figure rose in 1917 to 2,300 (*Report for 1917*).

<sup>2</sup> Mr. John Brophy, *The Five Years* (1936), pp. 224-6, gives the total enlistments from all sources up to Nov. 11, 1918, as : England 4,006,158 and Wales 272,924. According to Mr. F. W. Hirst, *op. cit.*, p. 13, up to May 25, 1916, 5,041,000 men had enlisted under the voluntary system in Great Britain.

In other words, the crime rate of those sections of the population who did not enter the fighting services must have gone up. How far it had risen cannot be accurately assessed from the material available. In the first place, the percentage of men in each age group who joined up is not known; secondly, war-time criminal statistics did not give separate figures for the various age groups concerned, their only distinction being between those under and above sixteen. There was not even an adequate distinction between the sexes. For these reasons no comparisons can be made, apart from children under sixteen, between war and pre-war figures for the age groups outside military age.

Another moot point is how far criminal elements within the military age groups may have entered the fighting forces. If they had been largely prevented from doing so, the fact of their remaining within the civil population would sufficiently explain the smallness of the decrease in crime. On the other hand, if they should have borne an equal share in the defence of the country, the conclusion would have to be drawn that criminality went largely up among those sections of the population who had previously not come into contact with the Criminal Courts. Expert opinion seems to be somewhat divided as to the actual number of men with previous convictions who succeeded in getting into the Army. Thomas Holmes, in an interview given to the *Manchester Guardian* of February 15, 1915, strongly denied any "romantic stories of criminals converted by

patriotism into heroes of 1914." He gives two reasons for his view that very few members of the criminal population entered the Army. Firstly, prisoners who enlisted had to hide the fact of their conviction, and were liable on discovery to be prosecuted for fraudulent enlistment. His second point was that "the average criminal is not physically of a type that would be welcomed by the Army." From this he explicitly excepted the Borstal and Reformatory School boys, both of whom he regarded as exceptionally fine soldiers.<sup>1</sup> The Reports of the Prison Commissioners seem, at least partly, to tell another story :—

"In order to ascertain the effect of the war on the criminal population, Governors and Chaplains of Prisons were instructed to note any unusual features in the character of the committals to prison. Their reports show that the great decrease which has taken place in the male population (4.8.1914: 11,531 males, 2,048 females; 31.3.1915: 7,178 males, 2,010 females) has been general throughout the country and may be ascribed to three principal causes: (1) the enlistment of many habitual petty offenders; (2) restricted hours for the sale of intoxicating liquors; and (3)

<sup>1</sup> Colonel C. E. F. Rich, *Recollections of a Prison Governor* (1932), p. 77, writes: "The Borstal Institution, in fact, became towards the latter part of the War more of a training establishment than a house devoted primarily to the cause of reformation, and the period for which a lad remained was frequently very short indeed. . . . Many of those ostensibly doing a sentence of three years' detention were actually released for active service after a bare few months."



‘ the great demand for labour, rendering employment easy and well-paid.’<sup>1</sup>

And one year later :—

“ The three main causes which seem to have contributed to this great decrease . . . have operated also during the year under report. . . . One of the notable effects of the War on the prison population has been that the receptions are now for the most part confined to the physically and mentally weak . . . the country’s call for men appealed as strongly to the criminal as to other classes. . . . A young burglar, one of a gang of five, told the Chaplain of a London prison that his four pals had enlisted : two had been killed, and two others wounded. He said he meant to go and ‘ do his bit ’ as soon as he got out of prison, a promise which he faithfully observed.”<sup>2</sup>

Newspaper reports of criminal proceedings during that period show a tendency of the Criminal Courts to make a distinction between the first offender charged with a petty offence (or at least with an offence involving no dishonesty) and the old lag.<sup>3</sup> Mr. Holmes’s opinions would, therefore, appear to refer to the earliest part of the war only, when recruitment was limited and the standard still as high as in peace-time.

<sup>1</sup> *Prison Commissioners’ Report, 1914–15*, p. 7.

<sup>2</sup> *Prison Commissioners’ Report, 1915–16*, p. 5.

<sup>3</sup> See below, p. 107.

The great increase in bigamy offences aroused much comment. It is certainly conspicuous, particularly when compared with the corresponding German figures :—

TABLE IV.  
*Convictions for Bigamy.*

	England and Wales.	Germany.
1913 . . . . .	117	56
1914 . . . . .	116	49
1915 . . . . .	193	23
1916 . . . . .	281	41
1917 . . . . .	398	37
1918 . . . . .	542	46
1919 . . . . .	849	120
1920 . . . . .	670	169
1921 . . . . .	516	220

Bigamy, it must be borne in mind, is essentially not a sexual crime; it is either committed for economic reasons (as an action preparatory to fraud<sup>1</sup> or murder for gain) or it is a reaction against the narrowness of the law of divorce, especially at a time when hasty marriages make the cry for divorce more urgent than ever. The trend of marriages and divorces in England and Germany during the war is shown in Table V (p. 102).

In Germany, therefore, the number of marriages showed a heavy decline up to 1916; from then up to 1918 there was only a slight recovery. The great rush came after the war. In England the war was never able to lower the marriage rate (1917 was a very insignificant exception), and the years 1915, 1919, and 1920 were peak

<sup>1</sup> F. Carlin, *Reminiscences of an Ex-Detective* (1927), pp. 133 *et seq.*, gives some pertinent instances of this type.

TABLE V.

	England. <sup>1</sup>		Germany.	
	Marriages. <sup>2</sup>	Divorces (Petitions).	Marriages. <sup>2</sup>	Divorces.
1911 . .	274,943	859	512,819	15,780
1914 . .	294,401		460,608	17,740
1915 . .	360,885			
1916 . .	279,846		279,076	10,494
1917 . .	258,855	1,600	308,446	11,603
1918 . .	287,173		352,543	13,344
1919 . .	369,411	5,085 <sup>4</sup>	844,339	22,022 <sup>3</sup>
1920 . .	379,982	5,184	894,978	36,542 <sup>3</sup>
1921 . .	320,852	3,464		
1922 . .	299,524		681,891	36,587 <sup>3</sup>

<sup>1</sup> From the *Statistical Abstracts for the United Kingdom*.

<sup>2</sup> The English figures give the number of persons married, the German figures the number of marriages, for purposes of comparison the German figures must therefore be doubled.

<sup>3</sup> Without the lost territories.

<sup>4</sup> *Civil Judicial Statistics*, 1919, p. 4: "This increase (in matrimonial suits) would have been much smaller but for the facilities for taking proceedings provided by the Supreme Court (Poor Persons) Rules 1914. These rules, which came into operation on June 9, 1914, enable persons without means to become parties to proceedings in the Supreme Court without payment of fees or costs."

years. This fact is usually attributed in the first place to the greater generosity of the British family allowances.<sup>1</sup> Some of the contemporary commentators, in particular those of the female sex, are rather outspoken in this matter. "In the United Kingdom," writes Mrs. Alec Tweedie,<sup>2</sup> "200,000 more people were married between August, 1914, and June, 1917, than would have been

<sup>1</sup> Sir Bernard Mallet, *Journal of the Royal Statistical Society*, Vol. LXXXI (Jan. 1918), p. 7, refers also to the fact that the bulk of the German Army stayed on foreign soil from an early stage of the war, and that in England conscription was at first restricted to single men (Military Service Act of Jan. 27, 1916, as compared with the Act of May 25, 1916).

<sup>2</sup> *Women and Soldiers*. (Without date, completed at Christmas, 1917), John Lane, p. 101.

married in peaceful years. . . . Why? Because war marriages in England were stimulated by our generous allowances and pensions. . . .”

Miss Playne<sup>1</sup> quotes from the *Manchester Guardian* (January 25, 1917): “Hundreds of marriages have taken place that could never have happened in any other circumstances. Young men and young women have married very much ‘above’ and ‘below’ their former station in life. . . .” She adds: “It was not unusual that quite young women married three times or so during the War.” Obviously many of these over-hasty marriages were doomed to failure from the beginning. That a small percentage of them led to bigamy, and that this percentage was somewhat higher than in Germany, may, apart from the divorce difficulty, have been due to a greater disinclination of English people to live in un-legalized sex relations. With laxity of morals this has but little to do.

Judges were at first somewhat inclined to deal leniently with bigamous soldiers, as can be gathered from the following report from *The Times*, (October 30, 1914):—

At Liverpool Assizes a soldier pleaded guilty to a charge of bigamy and was bound over on his own recognizance on promising to rejoin his regiment. . . . In disposing of the bigamy charge Mr. Justice Darling remarked that at the present moment he would not do anything if he could avoid it to

<sup>1</sup> *Britain Holds On* (1933), p. 239.

diminish the number of those who could be fighting for their country. Soldiers contracted irregular relations with women and were marrying them in order that they might get the allowances to which the wife of a soldier was entitled.

In 1917 the Lord Chief Justice, sentencing a Major to ten months' imprisonment in the second division, referred to "a disposition among Judges earlier in the war to treat bigamy by men serving in the Army as an offence for which a light sentence might be imposed. It has followed that there has been more bigamy. . . ." (*The Times*, December 21, 1917). Later penalties became somewhat more severe. While in 1915 out of 140 sentences of imprisonment only twenty-eight were for over six months, the corresponding figures for 1918 were 467 and 213. The trend, however, is not altogether consistent.

Comparing the English figures in general with corresponding German and Austrian data, the contrast as well as the reasons for it become obvious. In England we find a decrease in adult crime, less marked than the fall in the civil population and partly disappearing with the growing difficulties at the end of the war, but nevertheless still a decrease. In Germany and Austria there is, on the contrary, after an initial fall, from 1916-17 onwards a very considerable increase, indicating the much greater strain which the events of the last years of the war imposed upon the home front. The historian of this chapter of Austrian war

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experiences, Exner,<sup>1</sup> distinguishes for his country the following four periods :—

(a) The period of war enthusiasm lasting till the first months of 1915 : very low level of crime.

(b) 1915–16 : no enthusiasm, but everybody doing his duty. Crime figures still moderate, but female and juvenile delinquency already above peace level.

(c) 1917–18 : the population getting tired and despairing. The presence in Vienna of nearly 150,000 fugitives from the occupied territories imposes additional strain and causes much delinquency. The general crime rate rises much above the peace level.

(d) The period of collapse, 1918–20.

TABLE VI.

*Convictions for Crime in Austria.*

1913	.	.	.	.	.	about	9,000
1915–16	.	.	.	.	.	„	6,000
1917	.	.	.	.	.	„	8,000
1918	.	.	.	.	.	„	11,000
1919	.	.	.	.	.	„	20,000
1920	.	.	.	.	.	„	30,000

In Germany the difference between the first and the second half of the war is somewhat less marked than in Austria, probably because no German territory had actually been occupied by the enemy and there were scarcely any fugitives from the frontier districts. Convictions for larceny and murder, for instance, are as follows:—<sup>2</sup>

<sup>1</sup> *Op. cit.*, pp. 11 *et seq.*

<sup>2</sup> *Handwörterbuch der Kriminologie*, Vol. II, p. 45.

TABLE VII.  
*Convictions for Larceny and Murder in Germany.*

	Larceny.	Murder.
1913 . . .	114,707	110
1914 . . .	98,177	82
1915 . . .	91,912	08
1916 . . .	109,332	74
1917 . . .	137,604	71
1918 . . .	161,059	87
1919 . . .	159,755	184
1920 . . .	205,331	209

Much worse are the German figures of convictions for receiving (1913 : 10,072; 1918 : 24,674), while frauds show a surprising decline (1913 : 29,257; 1918 : 14,063). Attempts have been made to explain the latter fact by various considerations.<sup>1</sup> As the war went on the need for food and other indispensable goods had become so urgent that people who had been fraudulently supplied with commodities of a lower quality than they were entitled to kept quiet instead of informing the authorities. Moreover, as everybody had become entangled in the all-embracing network of war regulations, no one dared to prosecute another for fraud, lest the weapon of the criminal law might be used against himself. If this explanation of the fall in convictions for fraud be valid, it would represent a striking commentary upon the reliability of criminal statistics.<sup>2</sup>

II. How did contemporary experts and the Press view the influence of the war on crime? During the first few months very optimistic

<sup>1</sup> Liepmann, *op. cit.*, pp. 65-6.

<sup>2</sup> See the author's *Social Aspects of Crime in England between the Wars* (1940), Part I.

opinions were expressed by judges on circuit, chairmen of quarter sessions, and magistrates. To quote a few cases: In *The Times* (September 9, 1914) the chairman of the London Quarter Sessions is quoted as having said it was expected that the exceptional condition of things would have produced a great increase of crime. Happily, instead of an increase there had been a considerable decrease; in fact the number of prisoners was much below the general average. He bound over several first offenders with good characters who wished to serve their country, but refused to adopt this course in the case of an ex-convict who stated that he wanted "to turn over a new leaf and go to the front."

A few months later, the same chairman is reported to have remarked that his comments on the public-house early closing order as the cause of the reduction in the number of wounding cases had been criticized as not taking sufficient account of the Probation Act and kindred legislation. He emphasized his full appreciation of these measures, but they were not the cause of the diminution of wounding cases. He continued: "In the first nine months of this year 103 of these charges were heard here, an average of nearly twelve a month. In September, owing to what we have heard so much about, the number rose to seventeen, but then the eleven p.m. closing order was introduced, and the result was that in October the number fell to five. The ten p.m. brought about a further improvement, there being only two cases during November. And to-day, for almost the first time



in the history of the country, there is not a single wounding case for us to deal with.”<sup>1</sup>

In an article on “Patriotism and Crime” it was said :—<sup>2</sup>

Crimes of violence are rare. Various causes have contributed to this desirable condition of things. Undoubtedly the earlier closing of public houses has reduced the number of assaults. . . . The internment of a large number of aliens who were destitute or who had a bad police record has in part been responsible for the diminution of crime. . . . A London magistrate . . . explained that . . . there is a further reason for the clear sheet which London is showing. “The criminal”—he said—“is a patriot. . . . The criminal like the honest citizen is impressed by the War conditions, which make it every man’s duty to give as little trouble as possible.”

On the other hand as a consequence of the sudden transition from peace to war things were apparently not altogether easy for the poorer classes of the population :—

The early months of the war were very difficult for very many people. Poor crowded London districts like Hoxton suffered most of all. The minor trades carried on there in small factories or in the homes came to a standstill. . . . Of the crowd of women who cleaned offices in the City very many were

<sup>1</sup> *The Times*, December 2, 1914.

<sup>2</sup> *The Times*, December 11, 1914.

thrown out of work, for many offices were closed. All who did odd jobs about the streets were left standing idle. . . .<sup>1</sup>

Complaints are rife about the continued prevalence of unemployment among women in London. . . .<sup>2</sup>

Thus it is not surprising to find that the figures of female delinquency in 1914 were only very slightly below those for 1913. Taking everything into account, the nominal reduction should probably be interpreted as an actual increase. As far as non-indictable offences are concerned, an increase is even apparent in the criminal statistics themselves :—

TABLE VIII.  
*Police Returns of Females Apprehended or Appearing on Summons.*

	1913	1914.
<i>Indictable Offences :</i>		
Grand Total . . . . .	11,529	10,846
Larceny from the Person . . . .	613	588
Simple Larceny and Minor Larcenies	7,113	6,635
Receiving . . . . .	455	462
False Pretences . . . . .	387	445
Forgery and Offences against the		
Currency . . . . .	42	53
Attempted Suicide . . . . .	968	1,049
[Males : Attempted suicide . . . .	1,458	1,366]
<i>Non-Indictable Offences :</i>		
Grand Total . . . . .	107,488	107,955
Assault on Constables . . . . .	1,055	1,096
Common Assault . . . . .	9,241	9,478
Simple Drunkenness . . . . .	14,991	16,122
Drunkenness with Aggravations . .	26,886	28,182
Prostitution . . . . .	10,690	9,853

There is of course no evidence that the increase

<sup>1</sup> C. E. Playne, *Society at War* (1931), pp. 99-100.

<sup>2</sup> *The Times*, October 20, 1914.

had taken place during the second half of the year 1914.<sup>1</sup>

By the end of the year 1914 certain criminological types which are characteristic of war-time conditions make their appearance. The war swindler enters the scene with frauds on soldiers' wives and bogus street appeals for war charities. "The professional swindler," reported *The Times* during April, 1915, "is again active, for the country was, possibly, never in a more benevolent mood than at present, and he knows that many people with money are only waiting to be asked for it. . . ."

This may have been one of the reasons for the rise in the number of persons tried for false pretences in 1914 and 1915 :— <sup>2</sup>

1913	.	.	2,149	1916	.	.	2,324
1914	.	.	2,306	1917	.	.	2,230
1915	.	.	2,797	1918	.	.	2,013

In August, 1915, new police regulations under the Metropolitan Streets Act, 1903, were made to the effect that no person under sixteen could act as a collector, and that no collections could be made by any paid collector. In 1916 the Police, Factories, etc. (Street Collections) Act, section 5, provided that a police authority might make "regulations with respect to the places where and the conditions under which persons might be permitted in any street or public place . . . to collect money or sell articles for the benefit of charitable or other purposes. . . ."

<sup>1</sup> As to the later development, see below, p. 114.

<sup>2</sup> Strangely enough, the numbers of crimes of this category "known to the Police" declined at the same time (above, Table I).

In the course of the year 1915 the war leaves its mark more and more unmistakably on the criminological face of the time. Accounts appear of munition workers being fined for wrongfully leaving their employment and of women being sentenced for defrauding the Soldiers' and Sailors' Families Relief Fund.

The desire of alien women of a certain class to become "Englishwomen" by quickly arranged marriages had the sequel of several men being charged with conspiring to defeat the Aliens Restriction Act and with obtaining money by false pretences, since they were not English subjects themselves. A Society of Seven, reports *The Times* (September 2 and 11, 1915), demanded £500 money from a foreigner under the threat that unless he paid he would be interned. In another case, "the prisoner's method was to go to the addresses of aliens and enemy aliens and tell the persons in charge of the houses that, owing to his position at the Home Office, he could, in consideration of a sum of money, arrange that any particular alien who was in that house should not be interned." He was sentenced to four years' penal servitude for forty-six cases.

The end of the year 1916 seems to have been a turning-point for expert opinion on the relations between war and crime.

"It is commonly believed," wrote a Metropolitan magistrate of great experience,<sup>1</sup> "that

<sup>1</sup> Mr. Cecil M. Chapman, "War and Criminality," *Sociological Review*, Vol. IX (1916), pp. 82 *et seq.* The author is indebted to the editors for permission to quote this extract.

crime in general has decreased because it is proved by statistics that in certain parts of the country prisons have been converted into hospitals for lack of prisoners to fill them, and judges have frequently at assizes congratulated the country upon the general decrease of crime due to the war. I believe this view to be fallacious. . . . I have taken the trouble to write letters to many of the largest employers of labour in London to ascertain their experience; for example, the great railway companies, wharfingers, carriers, large retail shops and stores. Their answers leave no room for doubt upon the question. There has been a general increase of this form of crime (i.e., pilfering) among employees of both sexes and all ages. The increase is estimated variously by my correspondents at fifty per cent., 100 per cent., 200 per cent., and even 300 per cent. The claims for lost parcels upon railways and other carriers has increased by thousands of pounds since the war. . . . I came, for example, upon a man who was employed to attend the police courts and pay the fines for convicted pilferers of a certain trade. . . . The idea that 'everybody else seems to be making a lot out of the War, so I don't see why I shouldn't have my bit,' is widely prevalent. . . . The morals of the 'have nots' are to a large extent created by the conduct of 'the haves.' . . . Many girls who earn good wages have begun to whisper the word 'season' as they pass a railway barrier without a ticket with the assurance of the most experienced male offender . . . the real increase of prostitution and offences which lead to it are infinitely beyond

anything which appears in Court. What can we say to all this except that the conditions of war are so exciting and so demoralizing that they bring out in larger force the evil tendencies of human nature which ordinary conditions have done something to repress, but little or nothing to destroy."

A little later *The Times* (August 4, 1917) reported that "cases of pilfering from the wharf by casual labourers have greatly increased. When men are fined their mates combine and collect the amounts and thus a fine has no deterrent effect whatever."

The Prison Commissioners point out:—<sup>1</sup>

Theft from the railway by railway employees is becoming very common, reports a prison in the North and London. . . . The excuses usually given by the men are: slack supervision through shortage of men, pilfering going all round, as the result; restriction of dietary; complaints by children at home of want of sufficient nourishing food; lack of moral courage to resist in moments of sudden temptation.

At the beginning of the year 1917 the Press devoted much space to the "Poison Plot Trial," dealing with a conspiracy to kill Mr. Lloyd George and Mr. Arthur Henderson (see, e.g., *The Times* of March 12, 1917, p. 9), as well as to the "White City Case," a conspiracy to defeat the provisions of the Military Service Acts, 1916, and some other "Recruiting Scandals" ("Traffic in Exemption," see, e.g., *The Times* of March 22, 1917).

<sup>1</sup> Report for 1917-18, p. 9.

It is not without significance that in the field of frauds and kindred offences the bogus charity collector of the first war years seemed to have become replaced by fortune-tellers and similar types preying on the credulity of the public. While the charity fraud victim wants to help others, the customer of the Spiritualist mainly cares for his, or usually her, own future. "Spiritualist séances," writes Miss C. E. Playne,<sup>1</sup> "and the consultation of fortune-tellers and crystal-gazers became fashionable pursuits. At the turn of the year, Dec. 1916, the papers gave much space to the trial of an American subject, calling herself a psychic." Numerous cases of this kind were reported. As fortune-telling was dealt with under the Vagrancy Act of 1824, section 4, it did not add to the statistics for false pretences or fraud.

One of the most disturbing danger-signals of the time was the continuous increase in receiving stolen goods :—

TABLE IX.

	Apprehended.		Summoned.		Tried Before :	
	Male.	Female.	Male.	Female.	Assizes and Quarter Sessions.	Court of Summary Jurisdiction.
1913 .	1,019	318	208	137	515	1,184
1914 .	1,015	318	181	144	432	1,149
1916 .	1,134	483	257	252	269	1,790
1917 .	1,434	636	328	338	341	2,261
1918 .	1,465	595	336	286	414	2,185

*Society at War* (1931), p. 243.

In *The Times* of April 3, 1917, a London Police Court missionary and probation officer is reported to have stated that "the receivers of stolen property caused most of the juvenile crime. They abounded in the slums as well as in the West End. They baffled the Police and were seldom caught. They had made more boy and girl criminals than any other single agency."

Compared with the German figures,<sup>1</sup> the English, it is true, are mere trifles.

Instructive, if not as to the actual character of crime in London, in any case as to the state of public opinion on the subject, are the newspaper reports on what was called the "Waterloo Road Scandal," at the beginning of the year 1917, and the consequent agitation for the Criminal Law Amendment Bill. Hardly a day passed without a leading article or Court report drawing attention to the alleged scenes around Waterloo Station. As in the capitals of all the belligerent countries, the influx of great masses of soldiers was causing serious difficulties. The allegation was that under the cloak of prostitution serious crimes were being committed. In a leading article on the Criminal Law Amendment Bill *The Times* observed (February 28, 1917):—

The facts recorded (about the scandalous state of certain streets) have been recanted, questioned, and sometimes denied, but if anything the facts were under-stated. . . . It is not necessarily the case that matters are worse than of old. The recent awakening of public

<sup>1</sup> Above, p. 106.



opinion is partly due, no doubt, to the fact that early closing has driven certain elements of the population from the public-houses into the thoroughfares. It is also due to a very real and general solicitude for the well-being of our soldiers, especially the visitors to London from the Dominions.

Although a very considerable improvement of these conditions was reported, no less than fifty-one women were charged within the next few weeks at Tower Bridge Police Court with interfering with soldiers in Waterloo Road and neighbourhood. A few months later the Commissioner of the Metropolitan Police, referring to charges frequently made to the High Commissioner for Australia that soldiers from oversea had been robbed and drugged, said: "I have had Inspector C. engaged on inquiring into this. . . . This inquiry, lasting for over six weeks, failed to discover any authenticated case of drugging; twenty-four cases of robbing soldiers were prosecuted for conviction. . . ."

There is no trace of an accumulation of robbery cases to be found in the criminal statistics, where, on the contrary, crimes of this type known to the police, as well as the number of persons for trial, decreased considerably for the country as a whole. No local figures are given for the war years.

### III. *Female Delinquency during the War*

It is of particular interest to examine the criminological effects of the change in the status and activities of women brought about by the war. Criminal statistics are not very informative in this

respect. For certain types of offences, it is true, females increased their share not only relatively but also absolutely. The police returns for embezzlement for instance, give the following figures :— <sup>1</sup>

TABLE X.

	Apprehended.		Summoned.	
	Male.	Female.	Male.	Female.
1913 . .	1,337	25	155	3
1914 . .	1,096	13	145	3
1915 . .	805	26	108	6
1916 . .	679	45	107	18
1917 . .	674	80	109	26
1918 . .	409	50	66	17

Thus women increased their percentage from 1·7 per cent. in 1913 to about twelve per cent. in 1917 and 1918. Their share in “larcencies by a servant,” shows a slight decrease, which, however, may mean a relative increase, owing to the fact that between July, 1914, and the end of the war the number of women in domestic service fell from about 1,864,000 to 1,507,000 <sup>2</sup>—“a curious sidelight on the restlessness caused by the war” (*The Times*, February 6, 1917).

TABLE XI.

*Larceny by a Servant.*

	Apprehended.		Summoned.	
	Male.	Female.	Male.	Female.
1913 . .	3,160	889	113	32
1916 . .	4,053	985	156	47
1917 . .	5,027	1,227	173	73
1918 . .	4,772	1,346	229	53

<sup>1</sup> See also above p. 109.

<sup>2</sup> F. W. Hirst, *op. cit.*, pp. 290 *et seq.*; *Report on the Increased Employment of Women during the War* (1919).

The mental strain imposed on women by the abnormal increase in their responsibilities<sup>1</sup> occasionally led to sudden outbursts of violence. For example, the wife of a soldier, thirty-five years, was charged with attempting to murder a shop-keeper who was alleged to have committed an offence against her twelve-year-old daughter. She fired several shots at him with a revolver which her fifteen-year-old son had brought home from France, where he was working. "Her health," it was reported, "had given way through her efforts to keep going her husband's business." (*The Times*, December 26, 1917.)

Sexual irregularities, even if they did not lead to prostitution, bigamy, etc., were sometimes the source of other female delinquency. In one case a woman was convicted of perjury in connection with an attempt to foist her illegitimate child on her husband who served in the forces.

Almost more conspicuous than the increase in female delinquency brought about by the war was the intensification of crime *against* women, as a consequence partly of the widening of their spheres of activity and partly of the disturbances of family life.

In 1915, for instance, the employment of women as tramcar conductors began in some cities. In 1917, consequently, several cases of assault upon such women conductors were reported.

In the last years of the war several cases were reported of soldiers killing their unfaithful wives. Here are two typical cases :—

<sup>1</sup> See also C. E. Playne, *Society at War* (1931), Chapter IV.

Soldier acquitted of murder charge. While waiting at the railway station for the train which was to take him back to France after a week's leave, he had shot his wife, who had confessed adultery. The case for the defence was that he had forgiven her, and that the shot was an accident. The Judge told the jury that they could not judge a man who was accustomed to the grim side of war as they would an ordinary prisoner. (*The Times*, November 22, 1917.)

The prisoner, a soldier of twenty-one years, who had been married for a short time only, came home on leave to find his wife unfaithful. He forgave her, but when at night she told him that she had contracted venereal disease, he killed her. Convicted of manslaughter only, as the act was committed under gross provocation, he was bound over in his own recognizances, as the judge thought that punishment ought not to go "beyond what would receive the assent of a reasoned and instructed public opinion." (*The Times*, February 1, 1918).

The *Manchester Guardian* (February 1, 1918) commented on this case as follows:—

The Courts are beginning to treat certain offences by soldiers in the same spirit as the Church granted indulgences to Crusaders. It is all very natural and very intelligible, but very wrong and very much against the inter-

ests of the country. . . . The courts of law  
are not courts of morality. . . .

Many other cases, it is true, ended with sentences of death, or, in case of wounding, with imprisonment.

#### IV. *Juvenile Delinquency*

In the war of 1914-18 public opinion in this country did not seem to become aware of an increase in juvenile delinquency until the spring of 1915, after nine months of war. In *The Times*, for instance, the first reference to the problem is to be found on April 8, 1915, and it was only in May, 1916, that a Home Office circular drew attention to the phenomenon.<sup>1</sup> In December, 1916, a special committee, the Juvenile Organizations Committee, was appointed by the Home Secretary to consider, in view of the reported increase in juvenile delinquency, what steps could be taken to strengthen and extend the work of voluntary agencies concerned with the welfare of boys and girls.

It is characteristic of the great advance which has been made in the last twenty years in our understanding of the problems of juvenile delinquency that the authorities concerned, as well as private experts and public opinion, have from the very beginning of the present war been fully conscious of the threatening dangers. To give but one example, in the issue for September-October, 1939, of the *Magistrate*, the official bulletin

<sup>1</sup> Cecil Leeson, *The Child and the War* (1916), p. 15.

of the Magistrates' Association, Mr. Cecil Leeson devoted a special article to the problem of Juvenile Delinquency not, as he emphasizes, "to show the effect of war-time conditions on juvenile delinquency during the present war. It will be impossible to do that for some time; twelve or eighteen months at least. To recall the state of juvenile delinquency, and some of the causes of it, during the last war may be helpful, however, as indicating what we may expect during the present one."

And a few months later, in the December, 1939, issue of *Probation*, the Journal of the National Association of Probation Officers, we find the statement that there has arisen "a certain amount of delinquency amongst the wilder lads and a remarkable amount of enuresis amongst the younger children. . . . We do not want that experience [of the previous war] to be repeated, yet already the position is serious." <sup>1</sup>

What, in fact, was the experience of the last war? Was it simply the increase in numbers shown in Table III? To some extent this increase may have been more statistical than real. Owing to the absence of their husbands, many mothers, unable or unwilling to deal with naughty children, are said to have brought them before the juvenile courts instead of trying to exercise proper discipline at home.<sup>2</sup> Nevertheless it is unlikely that

<sup>1</sup> H. E. Norman, "The War and Probation," *Probation*, December, 1939, pp. 113-4.

<sup>2</sup> Sir William Clarke-Hall in *The Times*, February 6, 1917; Edith Sellers, "Boy and Girl War-Products," *Nineteenth Century*, Vol. 84, Oct., 1918, p. 714.

cases of this kind should have been even frequent enough to balance those cases of real delinquency which could not have been prosecuted on account of diminished police forces and other difficulties caused by the war. There cannot be the slightest doubt that the war-time increase in juvenile delinquency was, for the greatest part, not only a statistical but a genuine one.

Two principal interpretations of this increase have been advanced. The first lays more stress on the disruption of family life, absence of the fathers, war-work of the mothers, lack of supervision, and curtailment of social and educational influences; <sup>1</sup> the second blames rather the general atmosphere of restlessness and excitement produced by the war.<sup>2</sup>

In support of this latter view reference was made <sup>3</sup> to an investigation largely based upon material covering the period between August, 1917, and August, 1919, in which it was found that the father had been absent in only 29·3 per cent. of all delinquency cases.<sup>4</sup> Moreover, it was pointed out that "in 1918-19, when the number of men on active service reached its highest figure, the number of offences was already on the wane."<sup>5</sup> The truth is that probably all these factors—disruption of family life as well as the general

<sup>1</sup> Cecil Leeson, *The Child and the War*, p. 22.

<sup>2</sup> Professor A. Hamon, *Lessons of the World War* (1918), p. 317

<sup>3</sup> *First Report of the Children's Branch* (Home Office, 1923), p. 10.

<sup>4</sup> *Report on Juvenile Delinquency* (Board of Education—Juvenile Organizations Committee, 1920), p. 12.

<sup>5</sup> *First Report of Children's Branch*, p. 10.

atmosphere of restlessness and many other causes connected therewith—were responsible. It may not have been mere chance that the decline in 1918 was almost entirely limited to larceny, while most acts of pure rowdyism, such as endangering railway passengers, assaults, malicious damage, and gaming, showed further increases or at least no decrease. A perusal of the war volumes of the principal newspapers presents the same picture of children and adolescents who, deprived of any fixed standards of behaviour, commit offences in a spirit of recklessness and devilment for the sake of aims which, in themselves, may have been good, bad, or indifferent. The following are examples, culled from *The Times* of various dates from 1915 to 1918 :—

A schoolboy of thirteen steals money from a drawer in order to go to the front. He reaches Antwerp, whence he is sent back to England by the Germans.

Three boys of fourteen and fifteen are charged with burning the training-ship *War-spice*.

A boy of fifteen is charged with deserting his wife, aged seventeen. At the Registry Office he had given his age as seventeen.

A youth of twenty sentenced to twelve months' imprisonment and twenty-five strokes with the birch for an offence under the Vagrancy Act was stated to have posed as an Army Chaplain invalided home from the front. When arrested in the neighbourhood



of Leicester Square, where he had accosted several gentlemen, he was wearing clerical garb.

Dangerous gangs of young footpads, boys of seventeen, infest the streets of London, which were "so dark at night that the people attacked could not recognize any one."

Boys of eighteen commit burglaries, wearing black masks, carrying revolvers, life-preservers, and bottles of ether.

One of these cases raises another point which attracted much attention during the war of 1914-18 as well as in the present one—the effect of lighting restrictions. Mr. Cecil Leeson states that, while offences like thefts from shops, stalls, and vans had in pre-war times been almost equally distributed over the months of the year, during the war the number of such offences committed in the darker months was twice as great as the number committed in the lighter months.<sup>1</sup> The closing of many schools and, as a consequence, the introduction of a half-time system not only for boys of twelve and thirteen but even for younger children, together with the release of many twelve- and thirteen-year-old ones from school for work (it is said that 150,000 to 200,000 children between eleven and thirteen were so released), have been regarded as responsible for much juvenile delinquency.<sup>2</sup> The particularly heavy increase of offences among boys of twelve and thirteen was traced back to this source.

And a final point: the unduly high wages

<sup>1</sup> Cecil Leeson, *The Child and the War*, p. 37.

<sup>2</sup> *Ibid*, pp. 28 *et seq.*

earned by such boys were commonly regarded as demoralizing.<sup>1</sup>

It may be interesting to compare this English material with corresponding German observations made upon a number of adolescents committed to reformatory institutions during the war of 1914-18. They were made to write reports on the subject of "The War and Myself."<sup>2</sup> Most of them state that, though most enthusiastic at the outbreak of the war, they had begun to go to pieces when they were rejected as too young for the Army; they became depressed when they lost their former jobs and had no work, while educational and social facilities had been curtailed. It was disappointing for them to find that the war was so entirely different from what they had expected; no enemies were to be seen, no destruction to be witnessed. Nothing remained for them to do but to look at the war pictures and to commit petty offences.

Statistically the development of war-time juvenile delinquency in Germany was different from that in this country. Convictions numbered:—<sup>3</sup>

1913 . . .	54,155	1917 . . .	95,651
1914 . . .	46,940	1918 . . .	99,498
1915 . . .	63,126	1919 . . .	64,619
1916 . . .	80,399		

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<sup>1</sup> Edith Sellers, *loc. cit.*, p. 707 : "Never before have boys earned such high wages as they earn now, and never before have there been so many boy criminals, thieves, petty pilferers. . . ."

<sup>2</sup> K. Wittig in Fritz Giese, *Neudrucke zur Psychologie*, Vol. III, No. 1 (1918).

<sup>3</sup> See *Handwörterbuch der Kriminologie*, Vol. I, pp. 844-5; Liepmann, *op. cit.*, p. 98.

This table, in accordance with German law of that period, refers to juveniles between twelve and eighteen years (not, as Table III above, to those between seven and sixteen), and excludes roughly those offences which are, under English law, classified as non-indictables. As a comparison between the two sets of figures shows, there was a noticeable decrease in 1914 in Germany which had no counterpart in this country, and even in 1915 the rise, as compared with the pre-war level of 1913, was considerably smaller (about sixteen per cent. as against forty-five per cent.). On the other hand, while in England the flood could, by 1917, be stemmed, in Germany, under rapidly worsening economic conditions, it assumed even more threatening dimensions, until in 1918 the pre-war figures had almost doubled.

V. Summing up the principal results of this chapter we may say that the experiences of the war of 1914-18 were, in one respect at least, different from what had commonly been expected. Apart from some petty rowdyism among youths, there was no measurable increase in crimes of violence among the civil population during the war period. There are various reasons for this. One of them, and probably the most obvious of all, is the restricted consumption of alcohol. The other causes are of a psychological character. Thanks to Freud and his school we now know that actions and their unconscious or subconscious motives are not necessarily of the same character. As we have seen in a previous chapter, aggressiveness and lust for power, though not themselves

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belonging to the economic sphere, may—just as do sexual motives—lead to economic crimes. The special type of violence which constitutes the essence of war has provided no appreciable incentive to corresponding crimes among the civilian population. The mechanism of imitation has not worked in this way. Bovet, who studied the effect of the last war upon Franco-Swiss children,<sup>1</sup> found that it afforded no particular stimulus to the fighting instinct among them. Warfare, he thinks, has become so complex that it appeals to a variety of instincts, leaving not too much scope for aggressiveness. In his view, children are quite capable of distinguishing between individual and group struggles, or, as Bovet expresses it, they “are not shocked by rules that have exceptions, provided the former are taught before the latter.” With this theory we can agree up to a point. Children as well as adults, we are inclined to say, may be indeed shocked by ambiguity in the most solemn rules of our moral code; their anguish of mind may, however, find its expression in quite unexpected forms, as is shown by the case referred to in a previous chapter.<sup>2</sup> Moreover, human beings can, as a rule, endure only limited amounts of any specific sentiment. If they get their necessary quantum of violence by war, no further violence may be needed. To that extent war may act rather as an outlet for men’s pugnacious instincts

<sup>1</sup> P. Bovet, *The Fighting Instinct* (English translation, 1923), pp. 177, etc. Though the author explicitly excludes problems of delinquency, his observations are not without value for us.

<sup>2</sup> Above, pp. 73-4.

than as a stimulus to them. This generalization applies, of course, only to the average man.

Finally, it is not inappropriate to recall a point made with reference to Austrian conditions. There, it is suggested, crimes of violence declined during the war as a result of the depression of mind and the under-nourishment of the body.<sup>1</sup>

All these considerations may explain why the rise in crime during the last war was mainly limited to the economic field.

<sup>1</sup> F. Exner, *op. cit.*, p. 152.

## CHAPTER V

### THE OUTLOOK FOR THE PRESENT WAR

I. THAT the present epidemic of war will bring in its wake, in most countries touched by it, an enormous outbreak of lawlessness nobody can doubt. To expect anything else would be inconsistent with past experiences. What cannot at present be foreseen is the form and extent which these developments may eventually assume. At the time of writing there is hardly any information available of what is happening abroad in the field of crime. We read that in Germany the death penalty can now be imposed even for petty offences, when committed between sunset and sunrise,<sup>1</sup> or that in the parts of Poland which have come under Nazi rule acts of violence are frequent between the German "colonists" and the Polish inhabitants ousted by them.<sup>2</sup> Nor are we surprised to find reports of an "epidemic of highway robberies and hold-ups in the suburbs of Madrid,"<sup>3</sup> or of 200,000 violations of the price-control regulations stated to have been committed in the Tokyo area during the year 1939.<sup>4</sup> Out of such scattered

<sup>1</sup> *Probation*, February, 1940, p. 132.

<sup>2</sup> *The Times*, January 3, 1940.

<sup>3</sup> *Evening Standard*, March 5, 1940.

<sup>4</sup> *The Times*, March 28, 1940.

bits of information we may well piece together the picture of a world ridden with crime as the inevitable concomitant of the present conflagration.

For this country, our material, though much more comprehensive, is still far from adequate. The official criminal statistics for the year 1939 cannot be expected to appear before 1941, and even when available they will hardly give any separate figures for the last four months of that year. The present war, like the last one, was not complaisant enough to the statistician and social investigator to begin in January.

For London, however, a certain amount of information can already be obtained from the interesting Report of the Commissioner of Police of the Metropolis.<sup>1</sup> Though the statistical tables included in this report do not distinguish between war and pre-war months, the Commissioner, in his comments, has been careful to draw attention to the fluctuations of crime in the course of the year. In addition, the Home Secretary, at an early stage of the war, supplied the House of Commons with some figures for September and October.<sup>2</sup> For the more recent period it appears that similar information has not yet been forthcoming.

On the whole the experiences of 1914-18 seem to be repeating themselves; we may therefore limit our remarks to the barest outlines. In London there occurred a heavy fall in crime during

<sup>1</sup> Report for 1939. H.M. Stationery Office. Cmd. 6201.

<sup>2</sup> *Hansard*, November 23, 1939; reprinted in the *Magistrate*, Nov.-Dec., 1939, p. 262.

the first two months of the war (12,283 cases as against 16,023 within the same period in 1938), followed by a marked rise during November, with a climax in December, showing the largest number of indictable offences for any month of the last seven years.<sup>1</sup> The total figures for the year (94,852) are almost exactly the same as in 1938 (95,280).

A perusal of the daily Press discloses a considerable but not unduly alarming number of such typical war-time offences as over-charging, wearing uniform without authority or posing as an A.R.P. official, "charity frauds," rationing offences, obtaining passports by means of fraud or forgery, stealing sandbags, violations of the licensing laws, looting after air-raids, and so forth. Clubs bearing high-sounding names were fined for permitting public dancing and the sale of alcoholic liquors without licence. An M.P. wrote to the Press denouncing the "Bottle Party" as one of the worst war-time evils. On the other hand the Commissioner of the Metropolitan Police<sup>2</sup> vigorously protested against exaggerated reports which might produce the erroneous impression that London had become completely demoralized. He even described the position as "unusually good" with regard to night club, drinking-den, and gambling-hell offences. A metropolitan magistrate has kindly supplied the author with some observations on the state of crime in his district, from which a few facts may be quoted: Within the first six months of the war drunkenness increased by about twenty-five per

<sup>1</sup> Report, p. 8.

<sup>2</sup> Report, p. 11.



probable characteristics of such offenders. Black-out conditions are, however, not typical, and may well affect even persons who would ordinarily keep straight. We may therefore expect to find that among black-out delinquents unfavourable environmental factors are more in evidence than corresponding physical and mental traits.

To judge from the published figures police difficulties arising out of the black-out were not as considerable as might have been expected. The percentage of indictable crimes cleared up in the Metropolitan district fell from an average of about 28 for the years 1936 to 1938 to 25·8; the Commissioner adds that but for the war the figure would have been the best since 1936.<sup>1</sup>

It would be especially interesting to learn how far the war-time crime rate has been influenced by the sudden release of a great many inmates of prisons and Borstals. At the outbreak of the war all those prisoners (numbering 3,617) who had less than three months of their sentences to serve, as well as 1,795 Borstal inmates (1,677 boys and 118 girls), were discharged in accordance with the Government's evacuation scheme.<sup>2</sup> Of the latter group, 221 boys and twenty-three girls—i.e., approximately thirteen per cent. of the boys and nineteen per cent. of the girls—were again in custody after six months of freedom. Considering the increased difficulties of the first war winter,

<sup>1</sup> See the Report, pp. 9-10 and 49.

<sup>2</sup> The above figures were quoted by the Home Secretary in a written reply on March 14, 1940 (reprinted in the *Magistrate*, March-April 1940, p. 293).

this proportion cannot be regarded as unduly high.<sup>1</sup> Of the boys who were still on licence 481 were known to have joined the forces. Fortunately the ban on ex-Borstal boys, which had been originally imposed by the Army,<sup>2</sup> was removed. No corresponding figures seem to have been published for the released prisoners.

For motoring offences no exact figures seem as yet to be available. Even if the numbers were known, they might scarcely be suitable for comparison with previous years, owing to the great reduction in the number of vehicles on the roads and also to the adjournment *sine die* of a great many minor cases of this kind at the outbreak of war, probably because police witnesses were not available.<sup>3</sup> It will therefore be well to limit oneself to a brief consideration of the number of road accidents, though by no means all of them may have been due to criminal negligence. The Metropolitan Police Report gives separate figures for the pre-war and the war months of 1939 which show that "the war contribution to the accident problem is, in the main, a 'black-out' and pedestrian one."<sup>4</sup> While the total of accidents during the September–December period went down from 20,089 in 1938 to 19,130, deaths of pedestrians increased from 198 to 411.

III. Evacuation has sometimes been treated as

<sup>1</sup> The *Magistrate*, September–October, 1939, p. 245. See also H. Scott, *Probation*, July, 1940.

<sup>2</sup> See also H. E. Norman, *Probation*, February, 1940, p. 129.

<sup>3</sup> See *The Times*, September 12, 1939.

<sup>4</sup> Report, pp. 33–4.

a problem concerning solely the child population. It is, in fact, a phenomenon of vastly wider dimensions and one of the greatest social experiments of modern times, affecting not only the evacuated child but also the child who remains at home; not only the child but the family as a whole; not only family life but the whole economic and social existence of the country. A sudden shifting of large sections of the population is bound to upset the established equilibrium of supply and demand; it can spell ruin for small traders and other humble folk,<sup>1</sup> and may finally lead them to delinquency. Here, however, we are mainly concerned with the immediate repercussions of evacuation upon the crime situation, and we may well try to find some familiar pattern which will assist us in our efforts to solve the problems of this apparently unprecedented situation. There are two sociological phenomena which may provide convenient starting-points for further examination—i.e., migration and the contrast between town and country. The position of the former slum-dweller who finds himself transplanted to a new housing estate in the midst of a residential area may also offer some useful analogies. Criminology knows of only one modern migration comparable in any way with the recent population movement and from which certain deductions may be drawn—immigration into the United States. This, it is true, was a

<sup>1</sup> An interesting description of this "Aftermath of Evacuation" was given in the *Sunday Times* of September 17, 1939: "Problems of emptied City Areas. Shops without Customers."

migration of a different type; it brought masses of foreigners into a strange land—people alien in race, culture, national tradition, and language. It was a movement of complete families rather than of individual members—a movement that sought a permanent new abode rather than a temporary sojourn in existing homes. Moreover it was often a movement of the peasant to the town, not of the townsman to the countryside. In spite of such obvious contrasts, certain analogous features must present themselves to even the casual observer. A glance at the very extensive literature on the crime problem arising out of immigration into the United States might be illuminating, but would take us too far from our subject.<sup>1</sup> The main lessons to be learnt from this gigantic movement are comparatively simple. The sudden and unprepared transfer of Eastern and Southern European masses to a new environment could not fail to provoke that high-grade tension which is likely to result in crime, even apart from the specific criminological characteristics of the New World. Such an immigrant's attitude easily becomes "full of mistrust, of a vague feeling of danger, of a continual expectation of wrong or offence."<sup>2</sup> If, as frequently happens, the transfer is one of peasants into cities or of townspeople into rural areas, such frictions may become still more intense

<sup>1</sup> See, for instance, the *Report on Crime and the Foreign Born* (National Commission on Law Observance and Enforcement, No. 10, 1931); W. I. Thomas and F. Znaniecki, *The Polish Peasant in Europe and America* (1927); Thorsten Sellin, *Culture Conflict and Crime* (1938).

<sup>2</sup> Thomas and Znaniecki, Vol. II, pp. 1756 *et seq.*

owing to the age-long lack of understanding between the two groups. It is not essential for our present purposes to compare the crime rate of the immigrant with that of the native, as we are here concerned only with the former group and its behaviour before and after immigration.

The exact numerical extent of the official evacuation scheme is difficult to assess owing to the multiplicity of movements and counter-movements. We may, however, gain an idea of it by quoting the following published figures. According to the survey given by the Minister of Health in the House of Commons in November, 1939,<sup>1</sup> the initial movement covered roughly 1,500,000 individuals, among them 750,000 unaccompanied children, 542,000 mothers and young children, 12,000 expectant mothers, and 77,000 others. At the end of January, 1940, fifty-nine per cent. of them (forty-three per cent. of the schoolchildren) were stated to have returned home.<sup>2</sup> Since then the early summer of 1940 has seen new waves of town-children moved into safety areas, while many of those evacuated in September last had again to be uprooted and transferred to still safer districts.

As time went on the overwhelming number of problems arising from these migrations became more and more clearly recognized. In addition to a continuous stream of discussion in the daily Press, preliminary investigations of a local character were carried out in Liverpool and Cam-

<sup>1</sup> See *The Times*, November 3, 1939.

<sup>2</sup> *The Times*, January 30, 1940.

bridge.<sup>1</sup> Saddled as they were with other aspects of the problem, neither of these investigations could be expected to pay more than passing attention to the delinquency factor. The preliminary results of the Cambridge inquiry, for instance, show that out of 271 children evacuated from Tottenham ninety-two cases were reported as representing some special behaviour difficulties in their new surroundings, and out of them thirty were labelled as "aggressive" and only twenty-two as "delinquent" (eight as stealing and fourteen as lying, which cannot even be regarded as delinquency proper). Nevertheless these two factors were regarded as the types of behaviour most likely to prevent the desired adjustment of the children.

Professor Burt, whose study was especially devoted to the incidence of neurotic symptoms among evacuated schoolchildren,<sup>2</sup> found only a very small increase in delinquency (from 2.2 per cent. before evacuation to 2.9 per cent. after), as compared with the considerable extent of anxiety states and incontinence. He states that in most instances the children who committed offences in the reception areas had already been delinquent before, whereas the new cases occurred mainly among those near the borderline of mental de-

<sup>1</sup> *Preliminary Report on the Problems of Evacuation*, prepared by the Social Science Department of the University of Liverpool in co-operation with the Liverpool University Settlement (1939, Liverpool University Press), Aymeric Straker and Robert H. Thouless, *British Journal of Educational Psychology*, June, 1940.

<sup>2</sup> *British Journal of Educational Psychology*, February, 1940.

iciency. This is a point where special difficulties seem to have arisen through the failure of some probation authorities in evacuation areas to notify their colleagues in reception areas of the arrival of children and juveniles who were on probation in their home districts. It is even stated that parents occasionally consented to send their children away only on condition that nothing should be said of the existing Probation Order.<sup>1</sup> All this may have increased the difficulties of dealing effectively with children who had already shown delinquent tendencies, and of finding out the actual proportion of those who committed their first offences after being evacuated.

In face of the well-established fact that crime is predominantly an urban, not a rural phenomenon, it might perhaps be asked why there should be a rise in juvenile delinquency at all among town children evacuated to country districts. Should one not rather expect the healthier air of the country-side to cure the social evils of the slums? Unfortunately, expert opinion has had to reject such rash opinions as untenable. Rural districts owe their lower delinquency rate to a great variety of factors which cannot, at a moment's notice, be caused to function in town lads and girls who have been thrust helter-skelter into the country. "The town child cannot simply absorb the habits and traditions of the countryside in the same way as he can flourish on its more wholesome food and hours of sleep."<sup>2</sup> In the United States

<sup>1</sup> See H. E. Norman in *Probation*, December, 1939.

<sup>2</sup> *Probation*, February, 1940, p. 135.

child immigrants from Europe frequently committed offences not because their new surroundings were so much less healthy but because they were so different from their native conditions. A boy who comes from a district where everybody takes what he needs from pithead or railway-siding will not easily understand that this particular type of behaviour should be contrary to the laws and customs of his new country. In a study of the Hungarian immigrants in Detroit,<sup>1</sup> the frequency of offences of this class was explained by reference to the system of land tenure in Hungary under which a certain amount of wood-stealing on the part of the peasants was tolerated by the noblemen. Thus the old habit was transferred to the new surroundings, where it assumed the form of stealing coal from the railway trucks. It was further discovered that the delinquency rate of these Hungarian children was much lower for those living within the closed immigrant colony than for those who were scattered among the native population, the former group being still protected by the social solidarity and traditional standards prevailing within the colony. Likewise, for many groups of evacuees things might perhaps have been easier if it had been possible to preserve them as closed, self-contained colonies. On the other hand, as Professor Sellin<sup>2</sup> rightly emphasizes, "where cohesive groups exist which are more or less in conflict with the dominant

<sup>1</sup> E. D. Beynon, *Journal of Criminal Law and Criminology*, Vol. XXV, pp. 755 *et seq.*

<sup>2</sup> *Culture Conflict and Crime*, p. 73.



community group, some of the delinquency within such groups will be hidden," whereas scattered and weak minorities are less capable of hiding their delinquencies.

Some interesting material on evacuation in general and on the delinquency problems arising out of it can be found, in addition to the above-mentioned Liverpool and Cambridge Surveys, in Mrs. St. Loe Strachey's *Borrowed Children*.<sup>1</sup>

It is, however, not only the evacuated child who has become exposed to increased risks of falling into delinquency. Of his comrades who have stayed behind no less than between 400,000 and 500,000 are stated to have received no schooling at all during the first four months of the war.<sup>2</sup> This has obviously meant so much the more time for mischief, with increased facilities for it owing to absence of fathers and other restraining influences. As a consequence, figures which have been published from evacuation and neutral areas seem to show substantial rises in juvenile delinquency, due to the absence of compulsory school attendance or effective substitutes. Of late the position appears to have changed for the better.

IV. To sum up, there is a strong likelihood that crime, and in particular juvenile delinquency, will increase even more than it did during the previous war. The number of people who are being brought into close contact with the actual fighting is vastly greater and the impact upon their lives

<sup>1</sup> London, 1940. Delinquency cases, see pp. 53 *et seq.*

<sup>2</sup> *The Times*, February 5, 1940. Sometimes the number is even given as 800,000; see Mrs. Strachey, p. 97.

becomes more immediate and intense. As in totalitarian warfare everybody is more or less in the front line, he also has to move in the centre of the criminological danger zone. On the other hand methods of meeting the danger have, in the meantime, considerably improved. There now exists not only a better understanding of the psychological and social mechanisms involved but likewise greater variety and efficiency among the agencies upon which the burden of fighting juvenile delinquency falls. The juvenile courts, the probation service, and the Borstal system—just in their initial and experimental stages when the last war came—are now fully established institutions with a lifetime of experience and training behind them. The Approved Schools—at that time still called Reformatory and Industrial Schools—have undergone a complete transformation, and the Child Guidance Clinics and the Institute for the Scientific Treatment of Delinquency have risen out of nothing. Efficient use of these facilities may be prevented by serious difficulties, such as absence of many probation officers and psychologists on war service and the closing of many Approved Schools and Child Guidance Clinics at the outbreak of the war. In some cases, however, the latter have been able to continue their work, and additional accommodation in Approved Schools has lately been secured.<sup>1</sup> Even without an actual rise in the figures of young

<sup>1</sup> *The Times*, June 22, 1940, and the *Magistrate*, July–August, 1940. On the work of the Child Guidance Clinics, see Mrs. Strachey, Chapters V and VI.

offenders it is apparent that war conditions are multiplying the need for such institutions. For the choice between making a Probation Order and committal to an Approved School the home conditions of the offender will in most cases be decisive, and it has already been indicated that the absence of fathers and elder brothers, the war work of mothers, and similar factors frequently force the Juvenile Courts to prefer committal to a Probation Order. During the previous war the percentage of Probation Orders made in Juvenile Courts rose from 11·90 in 1913 to 14·32 in 1916, only to fall again to 11·76 in 1918 and 10·35 in 1919.<sup>1</sup> A similar development took place, however, as far as committals to Reformatory and Industrial Schools were concerned, though the decline after 1916 was here less conspicuous. The lion's share was then taken by corporal punishment, which more than doubled itself between 1914 and 1917, and by fines, which rose from about 11,000 in 1914 to 22,000 in 1918. To-day the need for methods more constructive than these has become well recognized.

<sup>1</sup> *First Report of the Children's Branch* (Home Office, 1923), p. 110.

PART III  
INTERNATIONAL LAW AND THE  
PROBLEM OF TREATMENT



## CHAPTER VI

### JUST WARS AND WAR CRIMES

I. WE may now be allowed to take up the thread which we had to drop in the introductory chapter, in order to expand our criticism of the attitude adopted by modern International Law towards the problem of just and unjust wars.

“Once,” Sir Norman Angell tells us, “I took a niece aged seven to the cinema. We came in when a thrilling drama was half-way through. Men were being pinioned and belaboured, and after watching a few moments my guest said in tones of agony: ‘Do tell me whether these men are the good men or the bad men. I cannot go on any longer not knowing whether to be glad or sorry.’”<sup>1</sup>

Who are the good men and who are the bad? Is this not a question we frequently ask ourselves? Unlike Sir Norman Angell’s little niece, we may, however, demand something more than a purely theoretical opinion as to whether we have to be glad or sorry. We expect a definite line of action to be prescribed by International Law. This, we readily admit, may sometimes be difficult on account of the many factors to be considered. Such controversial cases, however, we can at

<sup>1</sup> *The Unseen Assassins*, p. 176, fn. 1.

present leave out of question. Instances exist where the war guilt can be established beyond any doubt, and it is with regard to these that the practical distinction between just and unjust wars has hardly been carried to all its logical conclusions by present International Law. Should we not expect that, whenever the actions of belligerent countries have to be judged in the light of International Law, the decision should, without exception, be made dependent upon the preliminary question of war guilt?

At an earlier stage<sup>1</sup> we recorded the deplorable falling off of efforts to found International Law upon a sound distinction of this kind. It may be advisable, however, to deal more fully with some of the leading ideas of that negative period which lasted approximately from the eighteenth century up to the end of the war of 1914-18. In a brilliant course of lectures, delivered ten years ago in Geneva,<sup>2</sup> Guglielmo Ferrero drew attention to the eighteenth-century international lawyer who, perhaps more clearly than anybody else, had formulated and defended a view which is the exact opposite of our own: Emerich de Vattel (1714-67) in his *Droit des Gens*,<sup>3</sup> first published in 1758, introduced a distinction between the "necessary law of nations" which forbids *any* war but cannot be enforced in practice, and the "voluntary law

<sup>1</sup> See above, p. 19.

<sup>2</sup> *Peace and War* (translated by Bertha Pritchard, London, 1933), pp. 99 *et seq.*

<sup>3</sup> Here quoted from the English edition, under the title *The Law of Nations*, by Chitty (1834), Book III, Chapter XII, pp. 381 *et seq.*

of nations" which, less rigid, dominates the actual conduct of international affairs. The first rule of this makeshift law, as we may call it, is that "regular war, as to its effects, is to be accounted just on both sides," and its second rule is, "whatever is permitted to the one in virtue of the state of war, is also permitted to the other." de Vattel was by no means a cynic, and his object in introducing into International Law proposals of such a deplorable character was distinctly moral. In fact, he regarded them as the only means of restricting the extreme destructiveness and cruelty of warfare which, in his view, were inevitable if nations should go to war for what they believed a sacred cause. In order to preserve the standards of humanity in warfare it was necessary to concede to the adversary at least good faith. Of course, de Vattel added, "we must never forget that this voluntary law of nations, which is admitted only through necessity and with a view to avoid greater evils, does not, to him who takes up arms in an unjust cause, give any real right that is capable of justifying his conduct and acquitting his conscience, but merely entitles him to the benefit of the external effect of the law and to impunity among mankind." His action remains a violation of the "sacred law of nature."

It would be futile to waste words over the obvious sophistry of this double-track system. How does it stand, however, with the practical aspects of de Vattel's theory, which even to a great modern philosopher of history like Ferrero still seem to reveal "the innermost psychology of the



World War"? Living in the eighteenth century, de Vattel may well have believed in such an eternal and inescapable alternative between, on the one hand, gentleman-like conduct of war and renunciation of the medieval idea of *bellum justum* and, on the other hand, unrestricted war, waged with all the crusader's conviction of the sacredness of his cause. Those, however, who have come after him have had plenty of opportunities of observing that there are still other alternatives. Wars have been fought and are still being fought without any belief in the justness of the cause, and they have been no less bloody for that. "When two peoples are equally convinced that they are fighting for their rights there will be no possibility of peace between them until one of them is completely crushed. . . . de Vattel was right," says Ferrero.<sup>1</sup> Therefore, down with the whole distinction between just and unjust wars! To this we may reply that, as history shows, the belief in a just cause has not always been responsible for the cruelty of warfare. It may happen, for instance, that those who want to wage war on an unrestricted scale manufacture something which can be presented to their peoples as a just cause in order more easily to dragoon them into a war of extermination. In other words, the homicidal passion of the sadist may invent the "just cause" as, in other cases, the belief in the justness of one's cause may work as an incentive

<sup>1</sup> *Op. cit.*, pp. 106-7. Dr. E. Glover, too, seems to accept this view when he writes: "The fallacy of the 'righteous cause' has occasioned more suffering than any other form of human error" (*The Psychology of Fear and Courage*, p. 87).

to greater cruelty. de Vattel was wrong in not considering this aspect of the matter and in sacrificing the distinction between just and unjust war for the sake of a mere phantom. However, his was probably the only serious attack upon this distinction that was based not only upon its alleged technical impracticability but upon the character of man himself. And de Vattel, who lived and died before the French Revolution, may perhaps be excused for not having explored the abysses of human nature to their innermost depths. Imbued with the ideas of the age of enlightenment, he did not see that man is but rarely able to regulate his passions and conduct by rational principles; rather is it his passions that determine his principles.

II. For those of us who are still convinced that the distinction between just and unjust wars offers the only possible foundation of the International Law of War, the present position must be regarded as indeed disappointing, and not merely because of the persistent violations of its rules which we have witnessed. International Law must be prepared for hard blows. But the very rules of the modern Law of War seem to bear the odour of defeatism. Worst of all, perhaps, they are sometimes hailed as achievements to be proud of, instead of being denounced as the miserable makeshifts they are. It is one of the weaknesses of the lawyer that he tends to acquiesce in almost any legal principle if only it is expressed in a technically correct formula.

To illustrate these important points, certain analogies between International Law and Criminal Law may not be out of place, in spite of the many essential differences between the two branches.

In the realm of Criminal Law, the principle that the end justifies the means has always been rejected with the utmost vigour. For instance, nobody acquires the right to kill or to steal because he needs the property of the other for a purpose which, as such, might be regarded as justifiable. English Criminal Law in particular has taken up a very strict and uncompromising attitude on the so-called defence of necessity. For the benefit of the non-lawyer, reference may be made to the famous *Mignonette* case :—<sup>1</sup>

Three men and a boy escaped in an open boat from the shipwreck of the yacht *Mignonette*. After having passed eight days without food, the men killed the boy in order to eat his body. Four days later, they were rescued by a passing ship. . . . The Court of Queen's Bench declared emphatically that there is no general principle of law which entitles a man to take the life of an innocent person in order to preserve his own.<sup>1</sup>

The men were consequently convicted of murder and sentenced to death, though this sentence was later commuted to six months' imprisonment. It

<sup>1</sup> Kenny, *Outlines of Criminal Law* (fourteenth ed. 1933), p. 77. See also the decision itself in *Rex v. Dudley*, 14 Q.B. 273 (1884).

can be left open whether such a categorical rejection of the defence of necessity may not perhaps go a little too far—if only because, as Kenny says, “it must be useless to threaten any punishment the threat of which cannot have the effect of deterring.”

The abhorrence of criminal acts has, in English law, gone so far as to adopt the idea of what is called “constructive crime.” This means that a person who, in the course of committing a crime, has the misfortune of causing injury of a kind much severer than that intended, is held totally responsible for the result of his action. For instance, upon the man who in the act of committing rape or arson causes the death of another person, the death sentence for wilful murder may, according to English law, be imposed, although there was no intention to kill. It is the old doctrine of the Postglossatores: *Versanti in re illicita imputantur omnia quae sequuntur ex delicto*. (He who violates the law is held criminally responsible for anything that may result from his action.) This doctrine is sometimes regarded as over-harsh according to modern standards.

It goes without saying that in no system of Criminal Law in any penal system is there any thought of conceding to the criminal aggressor the same rights as it gives to his victim who tries to defend himself against unlawful aggression. Self-defence is usually admitted not only for the protection of life and health but, within reasonable limits, even for the protection of property, and a violent attempt to eject a person unlawfully from his house may be

resisted with as great force as would be permissible in defence of life.<sup>1</sup>

The manner in which the corresponding problems are dealt with by present International Law has not proceeded, in certain respects at least, much beyond the standard of Sir Norman Angell's niece. Like an onlooker in the cinema, it contents itself with being glad if the bad men receive their well-deserved punishment, and with being sorry if the good men happen to be the unfortunate victims. Sometimes it even disowns any theoretical and practical differentiations between the good and the bad men.

The principle that the end may justify the means has to some extent, it is true, been rejected by modern International Law. In the Briand-Kellogg Pact of August 27, 1928 (the Pact of Paris, or General Pact for the Renunciation of War), the Contracting Parties have condemned recourse to war for the solution of international controversies and renounced war "as an instrument of national policy" in their relations with one another. In other words, a war begun for the purpose, for instance, of acquiring territory belonging to a neighbouring State is unlawful even in those rare cases where the claim could be made that the territory was needed as "*Lebensraum*" to prevent the population of the aggressor State from starvation. The end, therefore, no longer seems to justify the means.

<sup>1</sup> Kenny, *Outlines of Criminal Law* (fourteenth ed., 1933), p. 105; Court of Criminal Appeal in *Rex v. Hussey* (1924), 18 Cr. App. R. 160.

The principal exceptions to this general outlawry of war—so far as they are of interest in this connection—are war in self-defence and war against a signatory who has himself broken the Pact.<sup>1</sup>

Unfortunately, however, even the Pact of Paris contains several gaps of such importance that the analogy between the condemnation of crime by Criminal Law and that of unlawful war by International Law ends almost as soon as it has begun. Here reference is made not only or even primarily to the most notorious shortcomings of the Pact, especially to the complete and deliberate failure of its authors to provide any sanctions against treaty-breakers,<sup>2</sup> or to the similarly deliberate vagueness of the term “war as a means of national policy.” Neither are we concerned with the technical faults which have made the Pact, in the words of Professor Lauterpacht,<sup>3</sup> “a document deplorable from the point of view of draughtsmanship and applicability.” All these shortcomings have been so fully exposed and censured by the experts that it is not for an outsider to pour more vinegar on already open wounds. Almost as bad as all this, however, seems to be the refusal on the

<sup>1</sup> As to the Pact of Paris, see Oppenheim, *International Law*, Vol. II (fifth ed., 1935), pp. 146 *et seq.*, H. Lauterpacht, *Transactions of the Grotrius Society*, Vol. XX (1935), Colombos, *Transactions*, Vol. XIV (1928), Sir Alfred Zimmern, *The League of Nations and the Rule of Law* (second ed., 1939), pp. 398 *et seq.*, C. van Vollenhoven, *The Law of Peace* (1936), pp. 196 *et seq.*, 233 *et seq.*, and especially Hans Wehberg, *The Outlawry of War* (Carnegie Endowment for International Peace, 1931).

<sup>2</sup> H. Lauterpacht, *Transactions*, p. 182.

<sup>3</sup> H. Lauterpacht, in *Peaceful Change*, edited by C. A. W. Manning, 1937, p. 139.

part of the authors of the Pact as well as on the part of international lawyers to draw the logical conclusions from the opportunity, provided by the Pact of Paris, of building up a truly fundamental distinction between lawful and unlawful wars—a distinction analogous to that between lawful behaviour and crime in the realm of individual actions.

Under Art. XVI of the Covenant of the League of Nations the application of sanctions against an aggressor State has, it is true, become possible, but this system of sanctions, besides its other weaknesses, hardly affects the legal status of the individual citizen of the attacked State as such.

In the realm of Criminal Law the individual wrongdoer, as we have seen, is made responsible even for those remote consequences of his criminal actions which he did not intend and sometimes could not even foresee. There is, moreover, a profound difference in legal evaluation between his actions and those of his victim who defends himself against unlawful aggression. And how could it be otherwise? How could the law have treated criminal aggression and lawful resistance on the same footing? This, however, is exactly what has happened in the realm of International Law so far as the individual citizen is concerned. In standard works on International Law—even in their latest editions, published long after the Pact of Paris—dicta such as the following are to be found :—

International Law requires that belligerents shall comply with its rules in carrying

on their military and naval operations. So long, and in so far, as belligerents do this, their warfare is legitimate; if they do not, their warfare is illegitimate.<sup>1</sup>

Whatever may be the cause of a war that has broken out, and whether or not the cause be a so-called just cause, the same rules of International Law are valid as to what must not be done, may be done, and must be done by the belligerents . . . this is so, even if the declaration of war is *ipso facto* a violation of International Law. . . .<sup>2</sup>

When once a war has broken out, the laws of war applicable to it are exactly the same whether it be just or unjust.<sup>3</sup>

Three pleas might be brought forward in defence of this theory.

Firstly it may be held that even an individual aggressor is not entirely deprived of his rights as a human being on account of his aggression. To this it might be replied that nobody would go so far as to suggest that States carrying on a just war should be exempt from the duty of observing the rules of civilized warfare, in so far as the right to take reprisals is not affected thereby.

There is, secondly, de Vattel's view that such a

<sup>1</sup> Oppenheim, *International Law*, Vol. II (fifth ed., 1935), p. 442. It is gratifying to note that some of the views expressed in this book and in the course of public lectures upon which it is based have recently also been stressed by Mr. Charles A. McCurdy in various interesting letters to the *Times*, as, for instance, on April 15 and 19, 1940.

<sup>2</sup> *Op. cit.*, p. 181; see also p. 160.

<sup>3</sup> Th. J. Lawrence, *A Handbook of International Law* (eleventh ed. by Prof. Percy H. Winfield, 1938), p. 93.



lenient attitude of International Law is indispensable in order to secure at least a certain minimum of decency and obedience to law on the part of States which have shown a dangerous tendency to neglect even those minimum rules. This fallacy has already been disposed of.

Thirdly there remains what is commonly regarded as the strongest argument of all—no distinction between just and unjust wars is practicable without a supreme arbiter, endowed with the necessary powers for carrying out his verdict. This is the line of thought behind the creation of the League of Nations and it has also inspired the advocates of an International Police Force and of Federal Union. There can be no doubt as to the desirability of such safeguards, just as within the boundaries of the State efficient police and courts are necessary to bring the law into operation. It has become only too clear, however, that—for reasons which are perhaps so strongly rooted in human nature as to be ineradicable—there is very little prospect of achieving such an ideal in our time. It might perhaps have been reasonable to pay at least some attention to the substantive law of war—i.e., the *jus ad bellum*—instead of staking everything on those issues. In some respects a good law that cannot be completely enforced is better than no law at all. The knowledge that such a law exists may act as an antidote against the spirit of despondency which must inevitably be produced by a legal vacuum.

Criticism of those equalizing tendencies in

modern International Law cannot content itself with the purely negative statement that the criminal aggressor should not, at least since the conclusion of the Pact of Paris, be treated by law on the same footing as the State which upholds and defends the Law of Nations. There exist certain parts of the Law of Warfare where a positive differentiation between the belligerent States seems to be urgently required as a consequence of the outlawry of aggressive wars. This is a reference to those sections which deal with the rights and duties of the individual citizen and of neutrals.

The unfortunate consequences of the failure in present International Law sufficiently to distinguish between wars fought in the interest of law and order and wars that are legally and morally crimes are clearly shown in the position of the *neutral* States. Belligerents have the right to hinder neutral commerce so far as it is in their interests,<sup>1</sup> but this right is, with certain minor exceptions, apparently still independent of the legal and moral position of the belligerent. That neutrality has, in actual fact, disappeared from the present world has become a commonplace. It is deplorable, however, that this political development should proceed to the tune of a legal theory which, though perhaps in harmony with de Vattel's rules, has now become distinctly obsolete.

So far as the *citizens* of the law-breaking State

<sup>1</sup> Oppenheim, Vol. II, § 23.

itself are concerned, it has been suggested that they have the right and the duty to refuse military service, because International Law takes precedence over State Law. If International Law brands a particular war as a crime, then, it is said, the citizens of the guilty State must abstain from any participation in such a crime.<sup>1</sup> Other problems are largely connected with the conception of War Crimes, and it seems only fitting that at least some remarks should be devoted to this interesting combination of the two phenomena to which the present book is devoted. A War Crime is obviously a type of crime which bears a special reference to war. In contrast, however, to those other crimes with which we have dealt in Part II, when discussing the influence of war upon crime, War Crimes are actions which do not merely happen in the course of a war and are not merely facilitated or perhaps even caused by the war, but actions that bear a much closer relationship to the conduct of the war itself. According to the classification given in the leading English textbook on International Law,<sup>2</sup> there are four different kinds of War Crimes :—

(1) Violations of recognized rules regarding warfare committed by members of the armed forces ;

(2) All hostilities in arms committed by individuals who are not members of the enemy armed forces ;

<sup>1</sup> Hans Wehberg, *The Outlawry of War* (1931), p. 84.

<sup>2</sup> Oppenheim, Vol II (fifth ed., 1935), p. 453.

- (3) Espionage and war treason; and
- (4) All marauding acts.

This list falls into two categories differing vastly from each other. On the one side there are acts in no way superior to common crimes, such as marauding and violations of the recognized rules of warfare. On the other side there are perfectly honest and perhaps even highly praiseworthy actions which are branded as war crimes only because—as we may perhaps express it—an individual contributes his share to a group action without the official blessing of International Law. This contrast may be illustrated by two examples—the treatment of the levy *en masse* and of irregular forces in general, both of which presented the most controversial points at the Hague Conferences. Certain concessions in the right direction have undoubtedly been made in each case, but they do not go far enough to protect the individual against the danger of being unjustly branded as a “war criminal.”<sup>1</sup>

With regard to the levy *en masse*, the concessions are rigidly restricted to inhabitants of districts not yet occupied by the enemy.<sup>2</sup> They, and they

<sup>1</sup> For the following text see James Brown Scott, *The Hague Conventions and Declarations of 1899 and 1907* (1915), pp. 1 *et seq.*; Oppenheim, *op. cit.*, Vol. II, pp. 211–12; Th. J. Lawrence, *The Principles of International Law* (seventh ed., 1923), pp. 491 *et seq.*

<sup>2</sup> The full text of Art. 2 of the Annex to the Convention of 1907 respecting the Laws and Customs of War on Land is: “The inhabitants of a territory which has not been occupied, who, on the approach of the enemy, spontaneously take up arms to resist the invading troops without having had time to organize themselves in accordance with Article 1, shall be

only, have the right to rise *en masse* against an approaching enemy; provided they carry their arms openly and act also in other respects in accordance with the law and usages of war. Their right is made independent of the approval or authorization of the Government, or of their being properly organized under a responsible commander.

Entirely different, however, is the legal position of inhabitants of districts already invaded, even if not yet fully and firmly occupied, by the enemy. If they take part in an armed rising, they are liable to be shot as "war criminals." For this distinction, which is not even explicitly laid down in the Hague Regulations, there does not exist the slightest legal or moral justification—except that it is convenient to invaders. The matter was simply left unsettled at the Hague because no agreement could be reached. The leading German expert of that time on the subject, Christian Meurer, points out that the Hague Regulations had made concessions to the masses such as had never been made before, but, he adds, there is no room in International Law for what he calls "*das freie Heldentum*"—i.e., the heroism of the free individual—within territory occupied by the enemy.<sup>1</sup>

The legal position of irregular forces in general is regulated by Art. 1 of the Annex to the Convention of 1907 respecting the Laws and Customs

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regarded as belligerents, if they carry arms openly and if they respect the laws and customs of war."

<sup>1</sup> Christian Meurer, *Die Haager Friedenskonferenz* (1905-7), Vol. II, pp. 101 *et seq.*

of War on Land. Such forces are lawful if they conform to the following requirements :—

- (a) If they are commanded by a person responsible for his subordinates;
- (b) If they wear a fixed distinctive emblem recognizable at a distance;
- (c) If they carry arms openly; and
- (d) If they conduct their operations in accordance with the laws and customs of war.

In view of the recent discussions in the daily Press on the interpretation of these requirements, particularly of the second,<sup>1</sup> the following facts may be of more than purely historical interest.<sup>2</sup> When, during the Napoleonic Wars, Prussia made a first attempt to tackle the problem of irregular forces from the legal point of view, the *Preussische Landsturm-Verordnung* of April 21, 1813, §§ 37–9, provided that only officers should wear armlets, while for the rank and file “uniforms or emblems made especially for the Landsturm are not allowed, because they would make members of the Landsturm recognizable and thereby more easily exposed to persecution on the part of the enemy.” Moreover, they were to have neither colours nor prescribed arms. This decree was, however, soon attacked as being incompatible with the accepted rules of International Law; for this reason it was

<sup>1</sup> See, e.g., *The Times* of July 25, August 5 and 7, 1940; also the debate in the House of Lords on July 30, 1940.

<sup>2</sup> For the following text, see Chr. Meurer, *op. cit.*, Vol. II, pp. 62–100.

replaced by a decree of July 17, 1813, which provided for a complete inclusion of the Land-sturm in the Army.

The Franco-German War of 1870-71 gave rise to controversies over the question whether the blouses of the French Irregulars were really distinctive enough, recognizable at a distance, and fixed. Finally, when the matter was discussed at the First Hague Peace Conference and some opposition arose against the insistence upon an emblem, it was the German military delegate, Colonel Gross von Schwarzhoff, who exclaimed: "Is it really so difficult to wear some sort of distinctive emblem? An armlet would be sufficient" (*Eine Armbinde genügt ja*).

This dictum was, during the last war, explicitly approved by Professor Christian Meurer, who, in his discussion of the legal problems raised by the Louvain incident,<sup>1</sup> observed that "there do not exist any restrictive regulations as to the kind of distinctive emblem. No uniform is required."

The recognition of irregular forces in general is thus kept within limits still narrower than those laid down for the population of districts in imminent danger of invasion. In particular, some sort of organization is essential, which implies that the regulations are applicable only to those "fighting in bodies, however small."<sup>2</sup> There is no legal protection for isolated individuals defending their

<sup>1</sup> Chr. Meurer, *Der Volkskrieg und das Strafgericht über Löwen* (Sonderabdruck aus der *Zeitschrift für Völkerrecht*, Vol. VIII, No. 6, 1914), p. 15.

<sup>2</sup> Oppenheim, Vol. II, p. 210.

homes.<sup>1</sup> Sporadic attacks upon this limitation have been made by equally isolated individual writers. A rebel like Nicolai, for instance, wrote during the war of 1914-18 :—<sup>2</sup>

Who in Germany would consider the East Prussian farmer as the dregs of humanity, were he to seize his rusty rifle and defend his village, if the Russians invaded the country? What is honourable for us is likewise honourable for the enemy.

Textbooks on International Law have also shown a certain amount of sympathy with such individuals by emphasizing that the term "War Crime" is used not in the moral sense of the term 'crime,' but only in a technical sense, on account of the fact that perpetrators of these acts may be punished by the enemy."<sup>3</sup>

On the essential question, however, these writers do not conceal their conviction that the Hague Regulations have still to be regarded as the greatest possible concessions beyond which "belligerents will never be able to go without the greatest danger to their troops."<sup>4</sup> In other words, the isolated individual may defend himself against a burglar, but he cannot defend himself against an invading enemy without being branded as a criminal—and this even if the invader is engaged in an international crime.

<sup>1</sup> See especially Professor A. Pearce Higgins, *War and the Private Citizen* (1912), p. 41.

<sup>2</sup> G. F. Nicolai, *Biology of War*, p. 124.

<sup>3</sup> Oppenheim, p. 453.

<sup>4</sup> Oppenheim, *loc. cit.*



What, then—it may once more be asked—is the reason for this attitude of International Law? We may perhaps be inclined to attribute it, in the first place, to a failure to draw the necessary consequences from the distinction between just and unjust wars, and, secondly, to the fact that International Law has not yet solved the problem of how to do justice to the *individual* elements in warfare and to the *group* elements in crime. As we have seen, war has never been, and is certainly not at present, a purely super-individual affair. On the other hand, we are becoming more and more conscious of the great part played by group and mass psychology in the causation of crime. International Law, it is submitted, tends to neglect the share of the individual in the conduct of war; one might almost say, it tends to shut its eyes to the existence of the individual altogether and opens them only to brand him as a “war criminal.” This leads to the following argument:—

Since International Law is a law between States only and exclusively,<sup>1</sup> no rules of International Law can exist to prohibit private individuals from taking up arms and committing hostilities against the enemy. But private individuals committing such acts do not enjoy the privileges of members of armed forces, and the enemy has, according to a customary rule of International Law, the right to consider, and punish, such individuals

<sup>1</sup> This view seems to go back to J. J. Rousseau, *Contrat social*, Book I, Chapter IV.

as War Criminals. . . . The conflict between praiseworthy patriotism on the part of such individuals and the safety of the enemy troops does not allow of any solution. . . .<sup>1</sup>

In other words, the unfortunate individual falls between two stools: he is deprived of the privileges legally attached to actions of self-defence according to Criminal Law, without receiving in exchange the protection of International Law. And this happens even where, as in Anglo-American doctrine, the idea of war as a relation between States only has not been so completely adopted as it has been on the Continent.<sup>2</sup> In a paragraph which may be regarded as one of the classical masterpieces of the literature of International Law, William Edward Hall made a vigorous attack upon the fiction that "the relation of war does not affect individuals except in so far as they contribute to the prosecution of hostilities." If the inhabitants of a militarily occupied territory are not enemies, he argues,<sup>3</sup> they "have no right of resistance to an invader. . . . The spontaneous rising of a population becomes a crime, and the individual is a criminal who takes up arms without being formally enrolled in the regular armed forces of his State. The customs of war no doubt permit that such persons shall under certain circumstances be shot, and there are reasons for permitting the

<sup>1</sup> Oppenheim, *op. cit.*, p. 456.

<sup>2</sup> Oppenheim, Vol. II, pp. 175-6

<sup>3</sup> *International Law* (eighth ed., 1924, edited by Pearce Higgins), § 18. See also E. Mousley, *Man or Leviathan?* (1939), pp. 103 *et seq.*

practice; but to allow that persons shall be intimidated for reasons of convenience from certain acts, and to mark them as criminals . . . are wholly distinct things."

Hall's protest has, however, left hardly any mark, although one might have expected that the much greater exposure to the risks of war which the individual has now to suffer should have led to a reconsideration of those old doctrines and regulations, based as they were upon the belief that non-combatants were immune from personal violence if only they did not purposely interfere with the actual fighting. Meurer explicitly tried to justify the attitude adopted by the majority at the Hague by pointing out that "formerly matters were different when the peaceful citizen was a regular object of warlike attacks, and, consequently, the law of warfare also had to be different."<sup>1</sup> It can scarcely be expected that such readjustments of the conception of War Crime to the actual conditions of modern warfare, as here envisaged, would lead to useless resistance and thereby cause even more unnecessary bloodshed—an objection which, by the way, could as well be raised against the institution of self-defence in Criminal Law. The irritating impression would, however, be avoided that under the cover of International Law actions are stigmatized as crimes which are not criminal at all.

On the other hand the tender consideration shown to the needs of the aggressor State and to the safety of his troops in enemy country seems

<sup>1</sup> *Die Haager Friedenskonferenz*, Vol. II, p. 53.

entirely incompatible with the Pact of Paris and its outlawry of aggressive war. If an attacked State should succeed in invading the country of the enemy, it may be right to apply to enemy citizens the rules laid down in the Hague Regulations, just as in the corresponding case of individual law-breaking self-defence would be unlawful in Criminal Law. If, however, the individual citizen of a State which is attacked in violation of the Pact of Paris can be bombed without any regard to his participation or not in actual warfare, surely it is an anachronism to label him as a war criminal if he retaliates as an individual whenever the necessity for individual action arises. "The modern soldier," it has been said in defence of the restrictions imposed by International Law on the right of levy *en masse*, "has wished to banish from the field of legitimate warfare all military activities not professionally controlled" <sup>1</sup>—one might almost add, just as the professional lawyer sometimes wishes to banish from the Courts all judicial activities by laymen. It is questionable, however, whether wishes of this kind are justified on the part of soldiers engaged in unlawful wars.

While, therefore, the conception of War Crimes in International Law does not sufficiently take into account the changed needs of the individual as an individual and his altered legal position under the Pact of Paris, it has hardly adapted itself any better to the achievements of group psychology. The fact that the individual has

<sup>1</sup> Sir Geoffrey Butler and Simon Maccooby, *The Development of International Law* (1928), p. 124.

acted as a member of a group should not fail to exert a favourable influence upon the severity of the penalty he receives. International Law and criminal psychology, it should not be overlooked, put the emphasis on entirely different aspects of the matter. Whereas to the former the individual matters only as a member of an organized group, criminal psychology has to reckon with all those changes in behaviour and outlook which the individual undergoes when he finds himself among a crowd or multitude of fellow human beings, even if their mutual relationship is entirely haphazard, transitory, and unorganized.

It may be noted in this connection that quite recently an attempt was made to tackle our problem with somewhat greater courage than had previously been shown. Shortly after the outbreak of the present war, two Draft Conventions, with Comment, were published as private documents by the Research in International Law of the Harvard Law School, the one on "Rights and Duties of Neutral States in Naval and Aerial War," and the other on "Rights and Duties of States in Case of Aggression."<sup>1</sup> It is interesting to observe the different attitude taken by these two publications towards the distinction between just and unjust wars. The draft convention on neutrality, which was published first, starts from the pre-

<sup>1</sup> Both documents are published in the Supplement to Vol. XXXIII of the *American Journal of International Law*, October, 1939. I am indebted to Professor H. Lauterpacht, Cambridge, for having drawn my attention to these publications which, owing to war-time conditions, may easily be overlooked in present discussions on the subject.

supposition that "all wars, regardless of their origin, produce the same legal consequences for all participants, and likewise for all non-participants,"<sup>1</sup> and explicitly abstains from any attempt to define just and unjust wars.<sup>2</sup> The draft convention on the rights and duties of States in case of aggression, on the other hand, acknowledges throughout that it is impossible indiscriminately to grant the same rights to the aggressor and to his victim. In fact, according to Art. 2, the aggressor State does not acquire any rights, nor can it be relieved of any obligations, by its aggression, and the only deviation from this principle is proposed in Art. 14 for humanitarian rules: the violation of such rules shall be unlawful even in relation to an aggressor State. This draft convention, however, makes no claim to represent the current International Law; it merely refers to the future.

In strange contrast to the harsh treatment of the individual citizen who tries to use his legitimate right of self-defence stands the great consideration shown by International Law for the real criminals of war—i.e., those responsible for the waging of unjust wars. While with regard to the ordinary citizen who takes up arms in legitimate self-defence the fundamental principles of Criminal Law are constantly ignored by the international branch of the legal science, the whole arsenal of modern criminological thought and knowledge is being used in order to save the real criminals of war. In the twenty years between 1919 and

<sup>1</sup> See *op cit.*, pp. 212 and 822.

<sup>2</sup> *Ibid.*, p. 825.

1939 International and Criminal Law have utterly failed to cope with this problem of how to deal with the individual war-monger as well as with the kindred problem of the criminal responsibility of States for war crimes and for wars which themselves constitute crimes. It is of great interest to observe how the true understanding of the tasks involved has gradually disappeared since the war of 1914-18. It was one of the foremost American authorities on International Law, James W. Garner, who indicated in 1920, soon after the conclusion of the Treaty of Versailles, that a great opportunity had been lost through the failure of International Law to establish a system of general rules for dealing with war crimes of this type :—

It would have been tantamount to the serving of notice on chiefs of States that he who provokes an unjust war, who wages it according to cruel and barbarous methods . . . does so with full knowledge that if he is defeated he will be brought to the bar of justice and punished equally with the humblest soldier who has been compelled to violate the law, and who, for this or other reasons, may be a thousand times less responsible.<sup>1</sup>

In spite of his undisputed authority his voice remained unheard, and four years later one of his colleagues <sup>2</sup> established the theory that modern

<sup>1</sup> James W. Garner, *American Journal of International Law*, Vol. XIV, 1920, p. 93.

<sup>2</sup> Professor Quincy Wright, *American Journal of International Law*, Vol. XVIII, 1924, p. 264.

efforts to fix the criminal responsibility for unjust wars upon individuals or States were nothing but a revival of old animistic ideas, attempting to trace all events to responsible agencies, animals, trees, stones, or human beings. And he went on to say:—

As the scientific habit of looking for natural causes rather than for responsible agents gained ground among men of learning, international jurists despaired of allocating and judging responsibility for war, and viewed wars as events, the conduct of which could be regulated but the origin of which could not be judged. Historians, statesmen, moralists, and propagandists continued to discuss the responsibility for and the justice of wars, but lawyers gave it up. . . .

Besides, the idea that the State can do no wrong dies hard. As late as in 1932 one of the most distinguished international lawyers in this country wrote:<sup>1</sup> “There is in fact no criminal class among States, and deliberate breaches of the law . . . are very rare in the international system.”

The writer further pointed out that the main reason for the law-abiding behaviour of States is to be found in the fact that they are more sensitive than the individual law-breaker to the mere reproach of having acted illegally, even if this reproach is not accompanied by punitive sanctions.

<sup>1</sup> Professor J. L. Brierly, *Transactions of the Grotius Society*, Vol. XVII (1932), p. 67.



It may be now somewhat difficult for us to remember that the year 1932 presented a picture of world affairs which may have justified such a verdict in favour of the State. If we did not know—thanks to the psycho-analysts—what a terribly criminal place the nursery is, we might well compare the world of 1932 to a kindergarten. To-day we have reached a stage where crimes are committed mainly by juveniles and by States. With them the average adult can no longer compete; he lags miserably behind. There is a definite tendency for criminality to move away from the individual in general towards the State and the Corporation.

Traditional legal theory has hitherto largely refused to pay sufficient attention to this tendency and to draw the necessary consequences from it. In the admirable *Report on International Sanctions* published in 1938 by a distinguished group of members of the Royal Institute of International Affairs<sup>1</sup> the traditional view is once more upheld as follows :—

The whole conception of “ crime ” is foreign to the theory and practice of international law. Crime, even in national law, is applicable only to the action of “ natural persons ”; the “ composite person,” the “ body corporate,” cannot be possessed of that “ guilty mind ” which is still in general an essential element of crime.

Remarks of this kind reveal that the traditional

<sup>1</sup> Oxford University Press, p. 13.

legal theory has failed to keep pace with recent economic, social, and political developments. In an epoch in which, as already mentioned, it is, apart from the child and the juvenile, mainly the State and the Corporation that turn to crime, in an epoch dominated by the ideas of mass action, of corporate action, and of totalitarianism, the Criminal Law is in danger of losing most of its ground if it fails to evolve new conceptions of group responsibility for crime, if it continues to ignore the wrongs done by the State and the Corporation, just as International Law ignores the rights of the individual.<sup>1</sup>

<sup>1</sup> See Chapter VII.

## CHAPTER VII

### WAR AS PUNISHMENT

IN this final chapter certain analogies may be drawn between the just war, waged in order to punish violations of International Law, and the punishment of crime. Even in ancient Greece just wars were regarded as measures of punishment and retaliation.<sup>1</sup> Analogies of this kind have played a not inconsiderable part in most of the discussions on the imposition of sanctions, the establishment of an international police force, and kindred subjects. After all, it is only natural that mankind should attempt to apply its long experience of fighting crime in the individual to the treatment of criminal acts of nations. It is inevitable, also, that a whole host of theoretical and practical scruples should have arisen out of such attempts to invoke the spirit of the penologist for the solution of the world problem of peace and war.

What, then, can the statesman and the international lawyer learn from the history and philosophy of punishment? Our present answer to this question must necessarily be brief and more in the nature of marginal notes than of a full discussion, for which the time is clearly not propitious. More-

<sup>1</sup> Coleman Phillipson, *The International Law and Custom of Ancient Greece and Rome* (1911), Vol. II, p. 183.

over, the problems involved, as well as the proposals put forward for their solution, are too well known to require more than the briefest summary. It is "only" the successful solution itself that seems to be entirely beyond reach.

The possible analogies refer to various aspects—to the aims pursued, the institutions available, and the methods of procedure and of punishment to be applied in both fields.

### *I. Aims of Punishment and Aims of War*

Crime and war have, in recent centuries, developed on very different lines. Whereas crime has become, if not less frequent, at least less crude and violent, war has taken the opposite course. Such a striking contrast cannot fail to influence current ideas on the aims of punitive war and the punishment of crime. Economic crimes, which now represent the great majority, will but seldom evoke, on the part of the community, reactions as deep and passionate as acts of violence. Moreover, as the consequences of law-breaking by a State are as a rule of vastly greater dimensions, they necessitate counter-measures of a more serious character. Nazi methods of "warfare," in particular, will inevitably result in a complete reversion of the hitherto prevailing views on the aims of punitive war. For the punishment of the individual offender retribution has now come to be regarded not as desirable in itself, but rather as something to be ashamed of and to be dispensed with if we can provide a better control over our

savage instincts. And surely petty offences do not call for retributory penalties.

On the other hand, international crimes, and in particular wars of aggression, have of late assumed such truly horrible forms that even many of those who want to free the penal system from vindictiveness may find it beyond their power of forgiveness to renounce all thoughts of just retribution in international relations. And does not such a renunciation, in the case of every serious crime at least, first of all require a process of genuine repentance on the part of the criminal himself? It is the complete absence of such a process which, in conjunction with the havoc wrought by war, makes it so difficult to drive out the spirit of retribution between nations. If the individual criminal shows himself willing to mend his ways he is expected to contribute to his redemption by his personal efforts. All that aggressor nations have usually offered when vanquished has been a change of government which affords no evidence of a change of heart.

There is, secondly, the aim of prevention. Horse-thieves, as everybody knows, are punished so that horses may not be stolen in future; similarly wars are fought to end war. As far as this goes, the aspect of prevention, apart from being frequently unattainable, presents no theoretical difficulties. The real problem is to decide, first, what ought to be the minimum requirements to justify preventive action against criminal individuals or nations, and, in the second place, to discover really efficient methods of prevention.

With regard to the first point the question arises, for instance, whether it is necessary to await the actual commission of a crime, or at least of an attempt, or whether it may suffice that the suspected person should have made certain remote preparations which are interpreted as showing his criminal intentions? Considerations of this kind have frequently led to penal legislation, such as that against "loitering with intent," "having in possession a picklock or other implement with intent to break into premises," and so forth. Even the institute of preventive detention may be mentioned in this connection, because it is based upon the idea that serious restrictions of personal liberty may, under certain conditions, be imposed, not in order to punish past crimes, but to prevent future ones. With regard to political crimes in particular there has always been a distinct tendency to extend the range of punishable conduct so as to cover even the initial stages where only the minutest traces of external action betray the evil intentions of the criminal. All this becomes strangely reversed as soon as we pass from penal to international policy. We know, of course, that in actual fact many wars are fought for the sake of prevention.<sup>1</sup> There does not as yet seem to exist, however, an adequate theoretical justification for such preventive wars. In recent discussions on the problem of international sanctions it has been

<sup>1</sup> This aspect of the matter is discussed, e.g., in Professor E. H. Carr's *The Twenty Years Crisis, 1919-1939*, p. 142, and in Professor Quincy Wright's *Causes of War and Conditions of Peace* (1935), pp. 9, 13, 58, 124.

pointed out, for instance, that one of the obstacles in the way of their effective application arises from the lack of legal provisions such as those dealing with the common loiterer: "There is, at the present time, no obligation upon States, even if they are members of the League of Nations, to refrain from concentrating troops on the frontiers of their neighbours. . . ." <sup>1</sup>

In the realm of criminal justice judges who have to administer the law of preventive detention have usually been reluctant to make full use of their powers because they feel that criminal science has not yet progressed far enough to enable them to impose restrictions of such severity on individuals whose actual crimes may be of a comparatively minor character—restrictions which could be justified mainly on account of the criminal's past record and probable future conduct. They are also afraid that, by doing so, they may lose the support of public opinion. The man in the street, insufficiently acquainted with the problems involved, disapproves of severe penal action being taken against what appears to him a minor offence, mainly in order to prevent future more serious crimes. The dilemma which faces the responsible statesman is not very different in character, though vastly heavier in weight. The public at large hates the idea of preventive war and refuses to see that it may actually be by far the less of two evils. As recent events have shown with

<sup>1</sup> *International Sanctions*. A Report by a Group of Members of the Royal Institute of International Affairs. Oxford University Press (1938), p. 14.

particular clarity, there exist, however, international constellations which may make preventive war imperative in the true interests of humanity. In such cases it is not only unwise but even immoral to shirk the responsibility of what would usually be a minor war and, by doing so, to let loose the inevitable major catastrophe.

As far as the most suitable methods of prevention are concerned, the choice lies chiefly between deterrence, reformation, and the rendering harmless of the law-breaker by means of physical coercion.

Penology can supply us with a particularly extensive collection of evidence to prove that "deterrence alone is not enough," may its aim be the so-called "special prevention" through deterrence of the individual law-breaker or the so-called "general prevention" by influencing the public at large. Surely nobody will suggest that deterrence should be discarded altogether and in every case, but it must at least be supplemented by other methods. All this is still more commonplace with regard to war, where the deterrent effect brought about by a particular war hardly ever outlasts one generation. Moreover, if applied by civilized nations, the scope of deterrent treatment is here even more strictly limited, because the penalties commonly regarded as the strongest deterrents are inapplicable against nations. Whatever objections may justly be raised against the death penalty, it has at least the advantage, in the case of an individual, that it finishes the matter; nowadays serious trouble seldom arises from



vindictive acts on the part of the family and friends of an executed criminal. Against a whole nation even the Nazis, much as they would like to do so, could scarcely in fact carry out such wholesale slaughter, and to a civilized people the very idea of a war of complete extermination remains altogether repugnant. Not only does the existence of many innocent among the guilty give pause, but the sheer weight of numbers is enough in itself to enforce fundamental changes in treatment.

Another aspect of deterrence is that degrading and defamatory penalties have long proved out of place when applied to a law-breaker with whom the community has to reckon for the rest of his life. Degradation, if employed at all, can be used only in conjunction with extermination.

Another possible method of preventing crime is through reformation. Difficult as it often is to conceive reformation as the essential aim of punishment in the case of the individual offender, it is almost impossible to regard it as such in relation to a whole people. Experiences in the province of penology have warned us not to be too ambitious in our interpretation of the whole idea of "reformation." Instead of over-stressing the need for a truly moral conversion, penologists have become used to content themselves with the more modest aim of "training for good citizenship." By means of penal treatment the criminal must be made to understand that his own genuine interests are served by a law-abiding attitude rather than by lawlessness, or, to use the popular phrase, that

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“crime does not pay.” The crux of the matter is, however, that this is true only of the petty offences of the masses, while large-scale crime, unfortunately, sometimes does pay over a long period, even if it fails in the end.

Similar considerations may apply to the punishment of international crime. Are there many examples on record of wars having brought about the moral revival of a vanquished aggressor nation? Ernest Renan, it is true, regarded the years between 1830 and 1848 as the best which France, and perhaps even mankind in general, had ever experienced,<sup>1</sup> but he refers to a period somewhat remote from the war. On the whole, we have become somewhat sceptical of any attempt to glorify the moral value of defeat. Though an unlucky war of aggression may indeed be, for a short while, a factor in clearing the air of much that is rotten in the vanquished country, it has still to be proved that the healthy state of affairs which it is supposed to bring about has any reasonable prospect of lasting long enough and of penetrating deeply enough. The destruction caused by modern war is so enormous, the atmosphere of hatred and persecution aroused by defeat so poisonous, that little room may remain for moral progress and reformation. “Training for good international citizenship,” on the other hand, requires a prolonged process of educational treatment which war as such can hardly provide.

Our previous deliberations on the aims of

<sup>1</sup> *Questions Contemporaines* (1868), p. 44, quoted by Jacob Burckhardt, *Weltgeschichtliche Betrachtungen*, Chapter 6.

punishment in the sphere of individual crime refer, of course, exclusively to the ordinary type of criminal who can still be regarded as amenable to corrective treatment. For those who are truly "incurable" only one method remains: to render them harmless either by completely cutting them off from civilized human society, for which they have proved themselves to be unfit, or, if this should afford sufficient protection, to deprive them at least of those possibilities of wrongdoing of which they have made improper use. Nazi penology, as is only too well known, has devoted special attention to the development of such methods as preventive detention for life of supposedly incurable criminals, not to mention castration of sexual offenders and the vastly increased use of capital punishment. The principal objections against preventive detention as used in Germany has been the failure of Nazi criminology to evolve scientific methods capable of distinguishing with a sufficiently high degree of certainty between incurable criminals and others. Analogous difficulties have been experienced by historians trying to find the clue to the mysteries of war-guilt. Recent events, however, have shown beyond doubt that there are cases which would fully justify a verdict of incurability and the corresponding penal treatment.

The significance of the ideas of restitution and compensation as essential functions not only of the Civil Law but of the Criminal Law as well can hardly be exaggerated. It is a welcome fact that

the former tendency to treat this aspect of criminal justice as of secondary importance is slowly disappearing. It is now recognized that compensation and restitution, far from being mere relics of antiquated retributory ideas, have to play their part within the framework of a constructive penal policy. Neither deterrence nor reformation can, in many cases, be achieved as long as the law-breaker remains in possession of his booty. Here again the experiences of the period after the War of 1914-18 have shown how greatly problems of this kind may become complicated if transferred from the individual sphere to that of international relations. Nevertheless, it should be recognized that the breakdown of the various systems of reparations was essentially due to technical shortcomings which should not be allowed to bring the idea itself into disrepute.

## II. *The Significance of Punitive Institutions*

It used to be a popular argument against the abolition of capital punishment that lynch law would flourish if the State failed in its duty to provide adequate penalties for murder. Similarly, the demand for the establishment of powerful international institutions has been based upon the belief that their non-existence has hitherto forced dissatisfied nations to go to war in order to secure their rights. Punitive war is necessary as long as there is no legal remedy between States. In one of Professor G. M. Stratton's stimulating books on international problems particular emphasis is laid

upon this analogy.<sup>1</sup> Nations fight because they have no other means of settling their disputes and because they are not trained to respect the rights of others. Stratton endorses this point by citing the case of two men who both wish to possess the same piece of land but are not prepared to go to the length of committing murder to secure it. In a great many cases the existence of a legal institution for the settlement of quarrels certainly acts as a safety-valve for aggressive instincts—in many cases, but by no means always. The counterparts of Stratton's two men are to be found in the two peasants in one of the famous stories by Gottfried Keller, the Swiss novelist.<sup>2</sup> Both peasants, friends and neighbours, covet a strip of land lying between their own possessions. No sooner does one of them purchase the strip than open quarrel breaks out which leads to endless lawsuits. Eventually, both of them, having wasted all they possessed on advocates and Courts, are thrown out of house and home. As evil chance would have it, they later cross each other's path again and, remembering their misfortunes, in a sudden attack of blind fury at once embark upon a struggle of life and death. Here, in a case that can be well regarded as typical of many quarrels between neighbours, it was not lack of legally provided institutions for peaceful settlement but their misuse that led to misery, hatred, and crime. "The fact is," as Dr. Ivor Thomas says,<sup>3</sup>

<sup>1</sup> *International Delusions* (1935), pp. 160 *et seq.*

<sup>2</sup> *Romeo und Julia auf dem Dorfe.*

<sup>3</sup> *War and Democracy*, ed. by Durbin and Catlin, p. 214.

“that no machinery in itself will preserve the peace.”

### III. *Methods of Procedure and of Punishment*

Problems of procedure have proved particularly attractive in discussions on the punitive aspects of war, but writers on international relations have warned us that, in this field, the analogy of penal procedure within the State must necessarily lead astray and has been “responsible for much loose thinking and slovenly argument.”<sup>1</sup> The popular analogy between the State engaged in punitive warfare and the policeman bringing a common law-breaker to justice—propagated not only by Lord Davies but by a host of other writers as well—was regarded as too cheap to be of any value. Apart from the alleged impossibility of treating States like individuals and of creating a really powerful and reliable International Police Force, our attention has been drawn to certain difficulties of a more technical character. First, it is said, in Criminal Law there is a rigid division of labour between the functions of Police and Court and, moreover, the Police themselves have three different functions: to prevent crime through their existence and vigilance; secondly, if in spite of their efforts a crime has been committed, to bring the offender before the Court and to collect the evidence; and, finally, after sentence they have, if necessary, to make sure that the sentence of the Court is carried into effect. The Police have

<sup>1</sup> *International Sanctions*. A Report by a Group of Members of the Royal Institute of International Affairs (1938), p. 6.

therefore frequently to act before trial and sentence, and are in no way concerned with the sentence itself. Clearly it will be indispensable to observe a corresponding division of powers and functions in the realm of International Law, but why should this lead to insurmountable difficulties? In cases where the International Police Force would have to act before the trial, it is obvious that the greatest caution will have to be applied to ensure that force shall not be used against an innocent State. In the report on *International Sanctions* <sup>1</sup> the case is quoted of the policeman who has to intervene in a street fight, and it is argued that it is not necessary for him to establish the responsibility before intervening, because, "if he arrests both the brawlers, the greatest inconvenience which he will impose upon the innocent party will be that of spending a night in the cells." The International Police Force, it is inferred, would not be able to act in such a devil-may-care manner. This, surely, means looking at the matter from the wrong angle. Many of the obstacles which are supposed to stand in the way of using the national administration of criminal justice as a model in the international sphere arise from the fact that the difficulties which have had to be overcome in the building up of national justice and are still sometimes threatening its smooth working are insufficiently familiar to, and therefore under-estimated by, writers on international affairs. Nevertheless it is obvious that everything—the potential damage as well as the

<sup>1</sup> P. 13.

potential advantage—will assume much greater dimensions in actions of an International Police Force than in ordinary criminal proceedings. It ought not to be overlooked, moreover, that the policeman, too, is under the obligation to make at least a provisional investigation into the available evidence before he proceeds to arrest anybody; would it be too much to expect similar precautions from an International Police Force? Moreover, even if a private person is arrested, the damage may be considerably in excess of “spending a night in the cells”; he may be kept in prison on remand for weeks or months; and, if he should resist, even serious bodily injuries may be inflicted upon him by the Police. On the other hand, the people of a lawbreaking State would have little to suffer from the invading International Police Force if they abstained from armed resistance.

Mr. Clarence K. Streit <sup>1</sup> defends the League of Nations against the reproach of not having acted in time to prevent Italian aggression against Abyssinia: “One cannot arrest a nation on suspicion.” Certainly, one does not “arrest” nations, but one can, even provisionally, render them harmless by other means. The only real obstacles are lack of goodwill and patience or of power rather than those technicalities which are usually put forward by the advocates of a policy of *laissez-faire* (to whom, needless to say, Mr. Streit does not belong).

Nor should it prove impossible to distinguish between Police action and Court proceedings on

<sup>1</sup> *Union Now*, p. 203.



traditional lines, and even impartial judges might be secured. To achieve this latter object is not at all easy in the administration of law within the boundaries of a State, because, as has been argued many times, the fact that judges belong to certain social classes may quite unconsciously influence their outlook. Just so the international judge might sometimes be unable to rid himself of his national prejudices, and his training will probably require not ten or twenty, but fifty or a hundred years.

All this does not mean that we are trying to support the idea of an International Police Force or any other specific scheme for international appeasement, which would clearly be outside the scope of this book. We are, on the contrary, in entire agreement, for instance, with Mr. H. G. Wells's criticism,<sup>1</sup> and would even go so far as to extend it to his own proposals. The favourite argument that "a State is something quite different in its nature and behaviour from an individual human being," however, is both too simple and too negative to solve any problem. Nobody in his senses will ever dispute it. The danger is at present that those differences are being overstressed rather than overlooked. The indisputable weak spots in those popular analogies between national and international schemes of law enforcement should not be used to discredit that fundamental analogy altogether. It is obvious that penal methods against a criminal State would have to take into account such factors as

<sup>1</sup> *The New World Order* (1940), p. 105.

(a) On the criminological side, the vastness of the numbers of individuals involved and the influence of mass psychology ;

(b) On the penological side, in addition, the fact that penal methods applied against a State may lead to a serious crisis for the rest of the world. Moreover, penal treatment of a State, in order to be efficient, may have to be extended over several generations, because the generation responsible for a war or other crime committed by this State may have to be regarded as incorrigible, and such little hope as may exist has to concentrate upon the improvement of later generations. This means that the carrying out of the treatment programme may also be a task for generations, which may seriously impede the consistency of the whole process.

With this proviso, it is a mistake to believe that nothing can be done in the case of a great nation turned gangster except to defeat it at an enormous cost and then to invite it to start the old game all over again.

In both fields of penal policy the use of force will remain indispensable, not only as an exceptional makeshift, but as a persistent policy. It is certainly true that force alone does not settle anything, but it seems to have become abundantly clear that without force nothing can be settled in this world. The clock of our hopes has to be put back for an indefinite period.

Are such views not a personal affront to the

pacifist and also to the modern penologist who has been striving very hard to do away with the element of compulsion in punishment? Are they not entirely incompatible with our ideal of reformation? There have indeed been few periods in human history when the arguments of the pacifist have proved themselves so much in the wrong as they have in recent times. After the experiences of the last seven or ten years one reads with an acute feeling of physical and mental pain those brave and honest attempts to show on grounds of logic, science, and reason that aggression can most profitably be overcome by non-resistance.<sup>1</sup> It is not proposed to deal here with arguments based on religion or ethics. With this reservation, however, the doctrine of non-resistance has suffered shipwreck because its method of reasoning has persistently failed to consider the case of an aggressor who is prepared to go to the utmost length in order to achieve his ends.<sup>2</sup> The same applies to the idea of non-resistance in modern penology. It may be tried in certain well-selected cases of juvenile delinquency in their initial stages, and even here it will succeed only when the experiment is carried out by an educationalist of outstanding personality. Apart from this, even methods of treatment such as probation, which bear scarcely any traces of punitive character, cannot, in the last resort, altogether renounce the use of compulsion.

<sup>1</sup> For some typical cases of this kind, see Bertrand Russell, *Justice in Wartime* (Second Essay), or Beverley Nichols, *Cry Havoc* (1933), pp. 247 *et seq.*

<sup>2</sup> See also E. Mousley, *Man or Leviathan?* Chapter IX.

In minor cases of international crime, where the injury inflicted by aggressive war or similar violations of the law is comparatively slight and the criminal still corrigible, the principle of probation may well be applied—i.e., the principle that the business of fixing and carrying out the adequate sentence can be postponed for a considerable period in order to give the offender a chance, under close but benevolent supervision and guidance, to “make good.”

Preventive detention of the incorrigible criminal individual has its analogue in the international sphere in a verdict of complete and lasting disarmament and segregation of the criminal nation. Such segregation is often regarded as impracticable or even unthinkable, be it for reasons of world economy or on account of the great contributions which the nation in question may still have to make to the common weal of mankind. Nevertheless mankind may have to choose between potential losses of this kind and complete destruction which will inevitably follow any further policy of compounding with the powers of darkness. For world economy, too, the elimination of a criminal nation may prove less costly than a succession of World Wars. The greatest difficulty in the way of an efficient application of “preventive detention” in the international sphere, as already indicated, arises from the fact that it entails the necessity of pursuing a definite line of policy over generations in a world dominated by continually varying groupings of national States. Even for the treatment of a criminal individual it is difficult

enough to lay down a long-term programme because the officials who will have to apply it, as well as their personal views, are likely to change long before it has been carried out. Only fools and Nazis will attempt to fix the essential features of an international policy to last for a thousand years.

On the other hand, it is characteristic of the change in our social and international outlook that the significance of *after-care* has now become more clearly realized. In our dealings with the individual law-breaker as well as with external enemies it is at a much earlier stage than ever before that we begin to tackle the question of what will have to come after the sentence has been served or the war has been won. We know that on the efficiency of our methods of "after-care" the success or otherwise of the whole operation may chiefly depend.

There is, however, one point that would seem to deserve our special attention. If in our treatment of the individual law-breaker it has become possible gradually to replace strictly retributory and deterrent methods by constructive and reformatory ones, this has chiefly been due to the fact that our whole attitude towards crime has become more comprehensive and more elastic; it attempts to embrace the whole personality of the law-breaking individual, while previously it was restricted to the single criminal act for which he happened to be convicted. It was the leading principle of the old classical school of criminology that "the Punishment must fit the Crime," and that it must therefore be graded much more according to the

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nature of the criminal act than according to the individual differences existing between the various types of offenders. This was regarded as indispensable in the interests of the liberty of the citizen (including the law-breaking citizen himself), since it was believed that any other course would necessarily mean placing too much discretionary power in the hands of Courts which might perhaps misuse it. It has been one of the outstanding merits of the sociological school of criminology to have shown that reformatory and constructive methods of dealing with offenders are possible only when the Court can, at least within reasonable limits, treat the whole personality and when its discretionary powers are sufficiently wide to allow of such individual treatment.

The modern theory of international relations, it is submitted, has been moving too long on lines analogous to those ideas of the classical school of criminology. It is in particular the *principle of non-interference* in the internal affairs of other nations—as opposed to the principle of intervention upon which the Holy Alliance was based<sup>1</sup>—that seems to resemble rather closely the old idea that it is not the business of the Criminal Court to deal with the personality of the law-breaker as a whole. A somewhat closer investigation into the mutual interdependence between the trends of international politics and the policy of criminal justice might yield some illuminating results.

<sup>1</sup> See, e.g., *Cambridge Modern History*, Vol. X (1907), pp. 17-18, 120.

The question arises how far a system of rigid adherence to the principle of non-interference in the so-called internal affairs of other nations is compatible with really constructive methods of preventing wars of aggression and of dealing with an aggressor State after the war. How can another nation be assisted to overcome the evil spirit in its midst and to develop a new outlook and new habits of international co-operation if everything that concerns its internal affairs has to be regarded as taboo? Within the boundaries of the penal system, constructive methods have become possible only because the individual law-breaker is, physically and mentally, in the hands of his community, which can educate and mould him and remains morally responsible for him and his conduct because it is responsible for the conditions under which he has to spend his life. It is the crux of the problem to retain control over the criminal's mind and behaviour and, on the other hand, so to train him that in the end he may become capable of taking his fate into his own hands.

In the realm of international relations no precedent seems as yet to have been recorded of any successful attempt of this kind and, as already indicated in our remarks on the prospects of reformation through punitive war, its chances will be very slender indeed as long as the present system of national States exists. The supporters of Federal Union may be on the right way in trying to prevent wars of aggression by breaking up the national States. Since under Federal Union law

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sovereign States would no longer exist, the war-mongering individual would be nothing but a citizen of the Union and therefore, it is hoped, unable to seek shelter behind any State. The Union could deal with him in exactly the same way as with any ordinary criminal without having to overcome the organized resistance of a group. International crime would be transformed into common crime and the law-breaker isolated from those most likely to support him under present conditions, because their patriotism would not be aroused.<sup>1</sup> There is one point at least, however, the weight of which seems to be under-estimated in this scheme: even an all-embracing Federal Union may make "war" theoretically impossible, but it is no safeguard against "revolution." Hitler's first crimes against humanity were committed under the cloak of revolution, not of war. And even if appeals to patriotism might lose their force where patriotism becomes objectless, other no less violent loyalties may take its place. As compared with the present state of affairs the principal theoretical difference, in this respect, would be that conflicts would have to be interpreted in terms of Criminal Law instead of International Law. In itself, there can be no objection against such a transformation and against the resulting breaking up of the whole conception of war. What is commonly understood by war would then appear in its true form either as the unjust war, which is nothing but a particularly heinous crime, or the just war, which is a particularly far-reaching and

<sup>1</sup> Clarence K. Streit, *Union Now*, p. 212.



responsible type of penal action, or it is civil war—i.e., revolution. To modify the ordinary Criminal Law in favour of the so-called “special needs” of the international law-breaker, which usually means to exclude him altogether from the scope of penal sanctions, would seem to be a cowardly retreat before the threats of the bully and the stupid weight of numbers. With regard to his followers, we ought to dissociate ourselves from the old idea, now once more propagated by Mr. Streit, that nations or—if there should no longer be any nations—that masses can in no way be held responsible for the crimes of their leaders :—<sup>1</sup>

“It is one thing for the immortal state to brand as a criminal one of its millions of mortals, and quite another for a few mortal statesmen to attach the stigma of guilt to an immortal nation. It is an appalling blunder, a monstrous thing, inherently indefensible.”

This statement is followed by the usual reference to Edmund Burke’s “I do not know the method of drawing up an indictment against a whole people,” to which it may well be replied that what Burke did not know a hundred and sixty-five years ago he would probably have learnt by now. What does it in fact mean, this beautiful phrase of the immortal nation? That the treatment of criminal nations, because of the endless chain of generations which they represent, constitutes an infinitely more difficult and subtler problem than that of the individual criminal is a commonplace which needs

<sup>1</sup> *Union Now*, p. 201.

no further discussion. Can nations, however, claim immortality just because they are nations, or have they to deserve it? As history proves, no nation is immortal as such. And can they claim irresponsibility only because they are nations?

It is somewhat strange that the Criminal Law should be excluded from the present tendency towards collectivization. Surely, if everything has to be brought into line with this all-pervading trend, there is no sufficient reason for refusing to introduce the idea of collective responsibility into the Criminal Law as well. No doubt we are here touching a problem of great historical interest and practical significance, and one which has to be examined in connection with the fundamental principle of Criminal Law that there should be no punishment without guilt. Punishment should be imposed only upon those who have violated the law wilfully or at least through gross negligence. The human race has needed a thousand years or more to grasp the idea that from the point of view of retribution as well as of prevention it has little sense to punish individuals who, through no fault of their own, have been unfortunate enough to commit actions which are penalized by the State. That is why, as a rule, we no longer punish lunatics upon whom the penalty would have no restraining or reforming effect. It is, however, not the principle itself but the possible exception to it with which we are at present concerned: Is the postulate *No punishment without guilt* restricted to actions of an individual, or is it also valid with regard to actions of a collective person, in particular

a State or a nation? Is not the guilty mind a quality which can be attached exclusively to the individual? And, if so, which are the consequences of this limitation? Does it follow that a collective person can never be made criminally responsible because it cannot act with a guilty mind, or does it rather follow that the latter should not be treated as an essential requirement in cases where the breach of the Criminal Law has been committed by a collective person? At least, should that requirement not be considerably modified in order to meet the special position of the collective person? In some countries the legislator has already attempted to find a practical way out of the difficulty by renouncing the requirement of guilt for certain minor offences altogether. To give a topical example, corporations can be fined for contravening the lighting restrictions on their premises. This cannot, however, be regarded as a real solution of the problem which goes far beyond the scope of petty offences. "Since the general welfare of millions of people intimately depends less upon the individual offender than upon the illegal practices of corporations a large area of the criminal law must be redefined to exclude criminal intent," writes a well known American criminologist,<sup>1</sup> "how can criminal intent be attributed to a corporation consisting of 3 or 300,000 stockholders?"

We are thus faced with the following dilemma : On the one hand, it is vital for the upholding of

<sup>1</sup> Professor N. F. Cantor, *Crime and Society : An Introduction to Criminology*. New York (1939), pp. 370-71.

decent standards of national and international morality that criminal responsibility should be extended to corporations and nations. On the other hand, criminal responsibility cannot be separated from the idea of guilt. The only way out would seem to transform this idea so as to bring it into line with the principles of collectivism. Among other considerations, we have to bear in mind that, in this modern world, it is getting increasingly difficult to assess the proper share which the individual has in its own actions, good or bad. In a recent review of Dr. Cecil Roth's *The Jewish Contribution to Civilization* the reviewer<sup>1</sup> puts the case of the son of a Jewish father and an Italian mother who "becomes a doctor in a modern sea-port and, working with a team of able colleagues in a local hospital, discovers a cure for a prevalent tropical disease," in order to ask how the credit for this discovery is to be shared. Or, in the words of an American scientist,<sup>2</sup> "the principle of individual responsibility postulates a world in which each individual can be the sole producer of definite results, a world in which each individual can be the sole master of his acts and fate. This, I submit in all seriousness, is not the world in which we find ourselves." As a consequence, it seems hardly unfair to hold the entire community responsible for misdeeds of the latter which could be perpetrated only because of the support which the leader was receiving from

<sup>1</sup> Mr. Alexander Farquharson, *Sociological Review* (January-April 1940), Vol. XXXII, p. 133.

<sup>2</sup> Morris R. Cohen, *Reason and Nature* (1931), p. 392.

the majority of the members. This is all the more so as the whole community, as a matter of course, without individual scruples is usually prepared to enjoy the material advantages derived from such collective misdeeds, especially from wars of aggression. There remains the problem of the minority which is genuinely opposed to such conduct. How can it secure a discharge from the common liability? Surely, a mental reservation, easy to conceal and difficult to disprove, cannot be enough. What must be required is an act of open dissociation from the criminal régime, either by revolution or by emigration.

What, it may be asked, will be the practical consequences of extending the scope of criminal responsibility to collective bodies? You cannot execute, nor can you imprison, whole nations or "300,000 stockholders," and penalties of an economic character may be imposed upon them by other methods as well, without invoking the machinery of the Criminal Law. All this is true if we were solely concerned with practical politics and the meting out of appropriate treatment. From the purely practical point of view the whole system of criminal justice might be dispensed with and could be merged into the administrative system. Criminal justice, however, is, or should be, more than an entirely practical matter. It should be based upon moral foundations, and it will survive as a living force only if it can be imbued with the prevailing moral ideas of the time. What is therefore needed in dealing with war criminals is a form of procedure capable of

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producing an authoritative verdict of guilt even against nations and other collective bodies, a verdict which those found guilty can challenge neither as pronounced by "a Court composed of their political enemies"<sup>1</sup> nor as coming from "a few mortal statesmen"<sup>2</sup> only. It would be a world calamity if the present war were to end without any preparatory steps being taken for the establishment of an impartial International Tribunal for the assessment of the war guilt, and if once more everything were left to the future historian who may or may not appear and who may or may not be equal to his task. As an International Court is unthinkable without an international mind, it will take a very long time, however, before such a tribunal will be able to begin its work,<sup>3</sup> and at best some future generations may benefit by it. In the meantime, *faute de mieux*, something like a joint plebiscite by all civilized and all belligerent nations of the world seems to be the only solution. In spite of all the notorious weaknesses of this method, it appears that after a totalitarian war which has brought the whole civilian population into the front line only the peoples themselves can form a jury sufficiently strong to shoulder the responsibility for a verdict on the question of war guilt. Such a verdict need not necessarily be followed by a sentence. All questions of treatment, penal and otherwise, might well be left to a body of experts, somewhat

<sup>1</sup> See Sir Arthur Salter's *Security : Can We Retrieve It ?* pp. 321-2, and above, p. 59.

<sup>2</sup> Above, p. 198.

<sup>3</sup> Above, p. 190.

on the lines of the "Treatment Tribunal" which figures in recent penal reform programmes.

To sum up some of the main problems discussed in the previous chapters: The difference between war and crime dwindles away to almost nothing if the former conception is restricted to unjust wars. There exists accordingly a strong affinity between the causes of war and those of crime, and, moreover, the methods suggested for securing peace and for overcoming crime are in many ways identical: On the one hand, institutional and social improvements—on the other, psychological recipes: canalization and deflection of the aggressive spirit, either through the wise use of peaceful competition,<sup>1</sup> or through "conscription of the whole youthful population as an army against nature,"<sup>2</sup> or through "preventing excessive repression by allowing children to be more aware of certain sides of their nature,"<sup>3</sup> to mention only a few of them.

With regard to the influence which war may have upon crime, we are, at the first glance, faced with an apparent contradiction: On the one hand, the belief was expressed and substantiated that war is a potent source of crime and invariably increases the crime rate; on the other hand, certain symptoms seem to indicate that war may sometimes act as a substitute for crime. The possibility was repeatedly alluded to that war and crime may, in

<sup>1</sup> P. Bovet, *The Fighting Instinct*, pp. 91 and seq.

<sup>2</sup> William James, "The Moral Equivalent of War," in *Memories and Studies*, pp. 267 et seq.

<sup>3</sup> Ernest Jones, *Essays in Applied Psycho-Analysis* (1923), pp. 377-8.

some ways, be subject to the principle of indestructibility of matter: if either evil be discouraged in one form it may show itself in the other. In fact, these statements can well be reconciled with each other, as they refer to different types of crime: Serious crimes of violence may decline owing to the competition of war as a more impressive form of violence and, conversely, they may increase in frequency if war were completely suppressed. Crimes of an economic character, however, invariably thrive during and after wars.





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